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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~347.~~ 82

THE UNITED STATES, APPELLANT,

vs.

THE IRON SILVER MINING COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 7, 1885.

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1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered, That heretofore and on, to wit, the 23rd day of March, A. D. 1883, came Benjamin Harris Brewster, Attorney-General of the United States, and Andrew W. Brazee, district attorney for the district of Colorado, and filed in said court their bill of complaint, and sued out of said court a subpœna in chancery against the Iron Silver Mining Company and James A. Sawyer. And the said bill of complaint is in words and figures as follows, to wit:

Bill of complaint.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States in and for the district of Colorado.

To the honorables the judges of the United States circuit court for said district:

The United States of America by Benjamin Harris Brewster, its Attorney-General, and Andrew W. Brazee, its attorney in and for said
2 district, brings this its bill of complaint against the Iron Silver Mining Company and James A. Sawyer, and thereupon shows to your honors:

That heretofore and on the 12th day of November, 1879, your orator was and for many years prior thereto had been, the owner in fee of the several parcels of land hereinafter described, the same adjoining each other and embracing a portion of the unsurveyed public domain of your orator, and being mineral land situated in California mining district, in the county of Lake and State of Colorado, in the district of lands subject to sale at Leadville, to wit:

A certain piece or parcel of land, containing one hundred and twenty-four acres and twenty-five hundredths of an acre of land more or less, and according to the returns on file in your orator's General Land Office, bounded, described as follows, with magnetic variation at fifteen degrees east, to wit:

Beginning at corner No. 1, a pine post four inches square, marked "1 x 661," being also corner No. 1 of survey No. 660 made for the Fanchon placer mine (so called), from which the southwest corner of section eighteen, in township nine, south of range eighty west, on the sixth principal meridian, bears south one degree thirty-five minutes and six seconds west at the distance of sixteen hundred and eighty-eight and two-tenths feet, a log cabin bears north forty-nine degrees thirty-five minutes east at the distance of one hundred and forty-five feet, a shaft bears north twenty-two degrees forty-five minutes east at the distance of two hundred and forty-seven feet, and a pit bears north eighty-seven degrees ten minutes east at the distance of three hundred and sixty-eight feet; thence
3 from said corner No. 1 north seventy-five degrees fifty-five minutes west, twelve hundred and ninety-five and seven-tenths feet to corner No. 2, a pine post four inches square, marked "2 x 661" and "7 x 660," being also corner No. 7 of said survey No. 660, from which a pine tree eight inches in diameter, blazed and marked "B. T. 2 x 661."

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and "7 x 660," bears south forty-three degrees forty-five minutes west at the distance of six and five-tenths feet, and a pine tree ten inches in diameter, blazed and marked "B. T. 2 x 661" and "7 x 660," bears south sixty-two degrees east at the distance of twelve and three-tenths feet; thence from said corner No. 2 north five degrees east, six hundred and sixty-five feet to corner No. 3, a pine post four inches square, marked "3 x 661," from which a pine tree fourteen inches in diameter, blazed and marked "B. T. 3 x 661," bears north thirty-four degrees forty-two minutes east at the distance of eleven and eight-tenths feet, and a pine tree twelve inches in diameter, blazed and marked "B. T. 3 x 661," bears south sixty-four degrees four minutes west at the distance of sixteen and eight-tenths feet; thence from said corner No. 3 north seventy degrees ten minutes east, nineteen hundred and ten feet to corner No. 4, a pine post four inches square, marked "4 x 661," from which a pine tree sixteen inches in diameter, blazed and marked "B. T. 4 x 661," bears south twenty-nine degrees forty-five minutes west at the distance of two and three-tenths feet, and a pine tree twelve inches in diameter, blazed and marked "B. T. 4 x 661," bears north sixty-three degrees thirty minutes east at the distance of six and five-tenths feet; thence from said corner No. 4 south seventy-five degrees east ten hundred and forty-six and two-tenths feet to corner No. 5, a pine post four inches square, marked "5 x 661"; thence south thirty-

4 two degrees forty-nine minutes east, two hundred and twenty-five and eight-tenths feet to a point on northerly boundary of the Tidal Wave lode, from which the northwesterly corner of said Tidal Wave lode bears south forty-nine degrees thirty-one minutes west at the distance of eight hundred and twenty and two-tenths feet, thirteen hundred and twenty-eight and five-tenths feet to a point on southerly boundary of said Tidal Wave lode, from which the southwesterly corner of said Tidal Wave lode bears south forty-nine degrees thirty-one minutes west at the distance of seven hundred and seventy-nine and eight-tenths feet, twenty-five hundred and forty-five and one-tenth feet to corner No. 6, a pine post four inches square, marked "4 x 661," from which the quarter-section corner on east boundary of said section eighteen, in said township and range, bears north fifty-four degrees eight minutes and twenty seconds east at the distance of twenty-seven hundred and sixty and eight-tenths feet; thence from said corner No. 6 south fifteen degrees west five hundred and forty feet to corner No. 7, a pine post four inches square, marked "7 x 661"; thence north fifty-six degrees west, sixteen hundred and eighty-nine and one-tenth feet to corner No. 8, a pine post four inches square, marked "4 x 661"; thence north seventy-six degrees west fourteen hundred and ninety-two feet to the place of beginning, containing one hundred and twenty-four acres and twenty-five hundredths of an acre of land, more or less, as represented by yellow shading in the plat of the patent of said claims hereinafter mentioned, reference being thereto had, said claims being commonly known as the Stinson placer mine.

And also of that certain other piece or parcel of land contain-

5 ing one hundred and thirteen and thirteen hundredths acres of land, more or less, and according to the returns on file in the general land office of your orator, bounded and described as follows, with magnetic variation at fifteen degrees east, to-wit:

Beginning at corner No. 1, a pine post four inches square, marked

"1–660" and "1–661," the same being also corner No. 1 of survey No. 661, patented to James A. Sawyer with his claim upon the Stinson placer (so-called), from which the southwest corner of section eighteen and northwest corner of section nineteen in township nine south of range eighty of the sixth principal meridian, bears south one degree, thirty-five minutes, and five seconds west, at the distance of sixteen hundred and eighty-eight and two-tenths feet; thence from said corner No. 1 south sixty-eight degrees forty-nine minutes west eleven hundred and ninety-seven and four-tenths feet to corner No. 2, a pine post four inches square, marked "2–660;" thence south sixteen degrees thirty minutes west eight hundred and eighty-five feet to corner No. 3, a pine post four inches square, marked "3–660"; thence south seventy-six degrees west twenty-six hundred and seventy feet to corner No. 4, a pine post four inches square, marked "4–660," from which a blazed pine tree eighteen inches in diameter, marked "B. T.– 4–660," bears south thirty-seven degrees east at the distance of twenty-one and three-tenths feet, a pine tree ten inches in diameter, blazed and marked "B. T. 4–660" bears north fourteen degrees east at the distance of twenty feet, and corner No. 3 of survey No. 1483, made for the claim of H. E. Hoelke et al. upon the Juniatia Lode, bears north seventeen degrees fifty-two minutes and thirty-four seconds east at the distance of nine hundred and ninety-six and seven-tenths feet;
6 thence from said corner No. 4 north nine degrees west twenty-one hundred feet to corner No. 5, a pine post five inches square, marked "5–660," from which a blazed pine tree ten inches in diameter, marked "B. T. 5–660," bears south fifty degrees east at the distance of five and nine-tenths feet, and a pine tree eight inches in diameter, blazed and marked "B. T. 5–660," bears north fifty-three degrees east at the distance of seven and one-tenth feet; thence from corner No. 5 south seventy-one degrees east ten hundred and eighty-eight feet to corner No. 6, a pine post four inches square, marked "6–660," from which a blazed pine tree, ten inches in diameter, marked "B. T. 6–660," bears north fifty degrees thirty minutes west at the distance of ten and seven-tenths feet, and a pine tree fourteen inches in diameter, blazed and marked "B. T. 6–660," bears south some fifty-one degrees east at the distance of seventeen feet; thence from said corner No. 6 north seventy-five degrees twenty-two minutes east twenty hundred and sixty-eight and six-tenths feet, to corner No. 7, a pine post four inches square, marked "7–660" and "2–661," the same being corner No. 2 of said survey No. 661, from which a blazed pine tree eight inches in diameter, marked "B. T. 7–660" and "2–661," bears south forty-three degrees forty-five minutes west at the distance of six and five-tenths feet, and a blazed pine tree, ten inches in diameter, marked "B. T. 7–660" and "2–661," bears south sixty-two degrees east at a distance of twelve and three-tenths feet; thence from said corner No. 7 south seventy-five degrees fifty-five minutes east twelve hundred and ninety-five and seven-tenths feet to the place of beginning, containing one hundred and thirteen and thirteen hundredths acres of land, more or less, as represented by yellow shading in the plat in the patent (hereinafter mentioned)
7 of said claim commonly known as the Fanchon Placer mine.

And your orator further shows to your honors that the said several parcels of land so then and there owned by your orator, were, and each of them was, covered by a valuable and thrifty growth of timber trees,

to wit, of pine, fir, and spruce trees, and in said parcels were, and in each of them was, contained sundry and various lodes, veins, ledges, and seams bearing silver, gold, and lead in place of great value; that said tracts and parcels of land hereinbefore described were, and each of them was, of no value as placer mining ground, and had little or no sand, soil, gravel, drift, or deposit thereon over rock in place from which gold, silver, or other precious mineral had been or could be produced or extracted.

And your orator further shows to your honors that at or about the sixth day of October, 1879, one James A. Sawyer and divers other persons to your orator unknown, then or theretofore, respectively, discovered sundry lodes, ledges, veins, and deposits in rock in place on said parcels, and on each of them bearing, containing, and carrying in rock in place on and in said parcels and each of them, gold, silver, lead, and other precious metals; that besides these discoveries, as your orator is advised and charges the fact to be, there was then on and in said parcels indications of divers and other similar lodes, veins, ledges, and other leads carrying such metal, which, in fact, then existed thereon, and of which there were then and there indications manifest and apparent to persons in that behalf skilled and expert; but your orator is advised, and charges the fact to be, that there
8 was not then, nor before that time had been, nor since that time has there been, any placer mining ground on said parcels or either of them which have theretofore, or then did or could, produce any gold, silver, or other previous metals or minerals by washing or by any process of placer mining for separating precious metals or minerals mechanically from sand-bars, sand, gravel, drift, detritus, slide, or rock broken, comminuted, pulverized by nature or otherwise naturally reduced, in paying quantities.

And your orator further shows to your honors, as your orator is informed, verily believes, and charges the fact to be, that afterwards and heretofore, to wit, on the 12th day of November, 1879, the said James A. Sawyer, and William H. Stevens, and Levy L. Leiter (said Stevens and Leiter being then and there skilled and expert in observing and understanding indications of valable lodes carrying gold, silver, and lead, and other valuable metals and minerals, and being officers of, and interested in, the said Iron Silver Mining Company, then being such corporation as aforesaid), conspired together to cheat and defraud your orator out of the said parcels of land, and did then and there fraudulently combine, confederate, agree, and conspire with W. Ahrens, T. H. Reims, A. M. Rucker, M. J. David, O. S. Crowther, P. Henderson, L. Rucker, and certain others whose names are to your orator unknown, to cheat and defraud your orator out of said lands, and to obtain fraudulently from your orator a patent for said parcels of land and for each of them upon the pretense that the same were placer ground and subject to entry as such under the laws and the rules and regulations of your orator's said land office aforesaid, and of your orator's General Land Office, for and with the intent of
9 thereby fraudulently securing to them, or some of them, and particularly to said The Iron Silver Mining Company, the great benefit, advantage, and profit arising and accruing from the timber trees then growing and being upon said parcels of land and each of them, and to arise and accrue therefrom; and also with the intent and purpose of securing to them, or some of them, and particularly to the said the Iron Sil-

ver Mining Company, fraudulently upon the pretense aforesaid the exclusive benefit of the divers and many lodes, fissures, leads, veins, ledges, and deposits bearing silver and gold and other precious minerals in rock in place; and in order to obtain said lodes, fissures, leads, veins, ledges, and deposits bearing silver and gold in rock in place at a less rate than your orator was then and there entitled to receive for the same, did then and there fraudulently conspire, confederate, and agree to and with said others, and with divers others to your orator unknown, to falsely represent to the register and receiver of your orator at Leadville aforesaid and to the officers of your orator's General Land Office, that the said parcels and each of them were placer mining ground and subject to entry at said land office as such placer ground; when, as in truth and in fact the said parcels were not then and there, nor was either of them, placer ground or subject to entry as such, but only subject to entry as lodes, leads, veins, ledges, or deposits upon a full disclosure of all the facts concerning the same, as they, the said confederates and conspirators then and there well knew.

And your orator further shows to your honors that, before the times hereinbefore mentioned, said James A. Sawyer, to wit, on the 28th
10 day of June, 1879, had located the Andrew Jackson lode, and on the 24th day of July, 1879, had located the Ferguson lode within the present bounds of the so-called Stinson placer, and the said James A. Sawyer and others, on the 28th day of June, 1879, had located the Bonanza Queen lode, and on the same day also located the Lizzie Belle lode, within the boundaries of the said Fanchon placer, described as aforesaid, and that certificates of these locations had been recorded at the times last aforesaid in the office of the recorder of Lake county, and besides the above mentioned, there had been divers other lode claims located on said Stinson and Fanchon placers, described as aforesaid, in all of which said lodes gold, silver, and lead, or other precious mineral, in rock in place, had been theretofore discovered, as your orator is advised and charges the fact to be.

And your orator further shows to your honors that afterwards, and on or about the sixth day of October, 1879, in the inception of said conspiracy and confederation, it was agreed and understood by and between the said William H. Stevens, Levy L. Leiter, and James A. Sawyer that the said Sawyer should abandon the said lode claims and locate the land on which the said lodes were as placer mining claims, for the benefit of the said Stevens and Leiter and the said The Iron Silver Mining Company, and that said Stevens and Leiter or said company would advance the necessary funds to prove up on such placer claims; that said Sawyer should have the said lode claims, and the said company should have the remainder of the land and all the timber growing thereon as well as upon said lode claims; and that said Sawyer should receive a certain wage and
11 reward, to your orator unknown, in consideration of his looking after the said timber to prevent other persons from cutting the same, and that said Stevens and Leiter or said company would furnish a sufficient number of persons to join with said Sawyer as co-locators with him to locate the ground in question as placer claim.

And your orator further shows to your honors that, in furtherance of the said confederation, conspiracy, and design, the said Stevens and Leiter,

or said company, did cause and procure the said W. Arens, T. H. Reims, A. M. Rucker, M. J. David, O. S. Crowther, P. Henderson, and L. Rucker, who were then in the employ of the said The Iron Silver Mining Company, to join in and assist in carrying out the said fraudulent confederation and conspiracy by joining with the said James A. Sawyer as co-locators of the said pretended Stinson and Fanchon placer claims, described as aforesaid, on the 12th day of November, 1879; and accordingly they, with the said Sawyer, united in locating and did locate the same on the day last aforesaid; that in furtherance of said confederation and conspiracy, the said locators, at the instigation of said Stevens and Leiter, or said company, relocated the said pretended placer claims, described as aforesaid, on the fifth day of December, 1880.

And your orator further shows to your honors that the said W. Arens, T. H. Reims, A. W. Rucker, M. J. David, O. S. Crowther, P. Henderson, and L. Rucker did not, nor did either of them, join with said James A. Sawyer in the said locations and relocations with a view on their part, or on the part of either of them, to associate themselves with him in the development of the premises in said locations and relocations described as mines or mining ground, but solely and exclusively to enable them
12 and each of them to convey to the said James A. Sawyer their and each of their pretended possessory rights under the said locations and relocations, in furtherance of the fraudulent confederation and conspiracy aforesaid, and to procure the patents hereinafter mentioned to be issued in fraud of the rights of your orators; that afterwards they and each of them conveyed their interests in said locations and lands to said James A. Sawyer.

And your orator further shows to your honors that afterwards, and in pursuance of said fraudulent confederation and conspiracy, on, to wit, the 11th day of February, 1880, the said James A. Sawyer filed in the office of your orator's register and receiver at Leadville aforesaid his application for patent from your orator of said Stinson and Fanchon pretended placer claims aforesaid, described as aforesaid, respectively, together with the papers and documents required by the laws and rules and regulations of your orator's General Land Office and local land office aforesaid in that behalf, and thereby did falsely pretend and represent, among other things, that said Stinson and Fanchon claims were respectively placer mining ground; that no known vein or veins of quartz or other rock in place, bearing gold, or lead, or silver, existed thereon respectively; that the labor done and the improvements made thereon respectively by the applicant as placer mining improvements exceeded five hundred dollars upon each of said claims, and that said improvements consisted of pits, shafts, and open cuts, as shown upon the plats accompanying said applications respectively and the field notes of the surveyors thereof respectively; whereas in truth and in fact the said Stinson and Fanchon claims were not, nor was either of them, placer mining ground; and known veins of quartz and
13 other rock in place, bearing gold and silver, then existed on said Stinson and Fanchon claims, as he, the said James A. Sawyer, then, to wit, at the time of filing said application, well knew; that the labor done and the improvements made on said claims respectively by the said applicant as placer mining improvements did not exceed, nor equal, five

hundred dollars upon each or either of said claims, nor amount to anything like that sum altogether; that no placer mining improvements of any sort had then been made upon said claims or either of them at the time of filing said applications, save and except two or three sluice boxes put in by said Sawyer at a spring near the head of Buffalo Gulch on said Fanchon claim, but the same, before the filing of said application, had been and was abandoned by him for the reason that the same did not, and could not be made to, yield any valuable returns; and the value of such placer mining improvements did not exceed in the aggregate thirty dollars; that the pits, shafts, and open cuts mentioned in said applications respectively were not, and were not intended for, placer mining improvements of any sort, but the same, at and before the time of filing said applications, had been and were dug, sunk, drifted, and devised for, and used in, the discovery and developments of veins, veins of quartz and other rock in place, bearing gold, lead, and silver, and not for any other or different mining purposes whatever, as the[y], the said Sawyer, Stevens, and Leiter, and said company, well knew at and before the filing of said applications respectively.

And your orator further shows to your honors that after the said
14 applications were so filed, in furtherance of the said fraudulent conspiracy and confederation, the said Stevens, Leiter, and said company wrongfully procured to be cut, or caused to be cut, off of and removed from the said parcels of land large numbers of valuable timber trees, to wit: fir, spruce, and pine trees of great value, for the use and benefit of said company, so that at the time of the filing of this your orator's bill of complaint said parcels have thereby been stripped and denuded of nearly all the timber trees growing thereon at the time of the inception of the frauds and wrongs herein complained of.

And your orator further shows to your honors, that in furtherance of the said fraudulent confederation and conspiracy, after the filing of said applications, due notices thereof were given by publication and posting, and the same, with the accompanying papers, being presented to your orator's register and receiver of your orator's land office at Leadville, and considered by them, and they, said register and receiver, being thereby deceived, were led to believe, and did believe, the said false and fraudulent representations to be true, namely: that in truth and in fact the said Stinson and Fanchon claims were respectively placer mining ground; that no known vein or veins of quartz or other rock in place bearing gold, lead, or silver, existed thereon, or on either of them; that the labor done, and the improvements made thereon respectively by the said applicant as placer mining improvements, exceeded five hundred dollars upon each of said claims, and that said improvements consisted of pits, shafts, and open cuts made for placer mining purposes upon said claims respectively, and not knowing that such representations so made by said applicant
15 were false and untrue, and being ignorant of the said fraudulent confederation and conspiracy, your orator's said register and receiver, at said land office in Leadville, on the 27th day of April, 1880, allowed the said James A. Sawyer, applicant, to make entry No. 285 for the said (so-called) Stinson Placer, described as aforesaid, and to make entry No. 286 for the said (so-called) Fanchon Placer, described as afore-

said; that thereupon your orator, being in like manner deceived by the said false and fraudulent representations, and believing the same to be true, and being ignorant of the fraudulent confederation and conspiracy aforesaid, and relying wholly upon the truthfulness of said false and fraudulent representations, issued its patent for the said (so-called) Stinson placer, described as aforesaid, on the 15th day of June, 1881, to the said James A. Sawyer, and dated said patent that day, and on the 17th day of November, 1881, issued its patent dated that day, to the said James A. Sawyer, for the said (so-called) Fanchon placer, described as aforesaid; that the said patent for the (so-called) Stinson placer is recorded in the office of the recorder of Lake County, in book 1 of patent, at page 166, &c., and the patent for the so-called Fanchon placer is recorded in said book 1, in said recorder's office, at page 206, &c., reference being thereto had.

And your orator further shows to your honors, that by means of the fraudulent confederation and conspiracy aforesaid, and the false and fraudulent pretenses aforesaid, the said patents were, and each of them was, fraudulently and wrongfully obtained from your orator.

16 And your orator further shows to your honors, that in furtherance and promotion of the objects of the said conspiracy, and in order that the said the Iron Silver Mining Company might have its share of and enjoy the valuable fruits and results thereof, on the 7th day of February, 1882, the said James A. Sawyer conveyed, by deed dated that day, and recorded in book 52, at page 211, &c., of the said records, to the Iron Silver Mining Company, the so-called Stinson Placer and the so-called Fanchon Placer, respectively described as aforesaid, excepting and reserving, however, from said conveyances the following-named lodes and veins, to wit: The Bonanza Queen, recorded and described in "Book O," page 78 of said record; the Lizzie Belle, recorded and described in said "Book O," page 79; the Ferguson, recorded and described in said Book, page 175; the Andrew Jackson, recorded and described in said book, at page 72; and the southern 750 feet of the Paxton, recorded and described in said book at page 176.

And your orator further shows that the so-called Stinson and Fanchon claims, described as aforesaid, have not, nor has either of them, nor has any part or parcel thereof, been worked or utilized in any manner as placer mines, or for placer mines, but, on the contrary thereof, the same have been utilized, and particularly since the time of the entries aforesaid, by the said Sawyer, Stevens, Leiter, and said company working the many lodes thereon, hereinbefore named, and others, which are nameless, or the names thereof to your orator unknown, the same being veins of quartz or other rock in place bearing gold, silver, and lead, and which have been worked or utilized as aforesaid, for the precious metals aforesaid, which they bear and yield.

17 And your orator further shows to your honors that, as your orator is advised, there are divers or sundry persons who have or claim some interest in or lien upon the premises aforesaid, or some part or parcel thereof, whose names are to your orator unknown, who were discovered, your orator prays may be made parties defendant to this bill.

And your orator further shows to your honors that the said patents and

deeds are, and each of them is, a cloud upon the title of your orator to the lands and premises therein described; that the said Iron Silver Mining Company threatens to continue to cut the valuable timber trees, to wit, pine, spruce, and fir trees thereon, and it and the said James A. Sawyer threaten to take large quantities of valuable ore from the many valuable lodes, ledges, veins, fissures, and deposits in rock in place on said lands and premises bearing silver, gold, and lead, to the great prejudice and irreparable damage of your orator, and that said company before it acquired any interest to or in the said lands, or any part thereon, by said deed to it, or otherwise, was informed of and knew of the fraudulent confederation and conspiracy aforesaid, and of the false and fraudulent pretenses and representations aforesaid, and each of them, and well knew that the said pretenses and representations aforesaid were false and untrue.

Forasmuch, therefore, as your orator is without remedy in the premises, save in a court of equity, and to the end that the said the Iron Silver Mining Company, and the said James A. Sawyer, who are made parties defendant to this bill, may be required to make full and direct answers to the same, but not under oath, answers under oath being
18 hereby waived, and that said patent and said deed may be declared void and delivered up to be cancelled as clouds upon the title of your orator, and that the said defendant, and each of them, and any claiming under them, or either of them, may be forever enjoined and restrained from asserting any right to or lien upon said so-called Stinson and Fanchon placer claims, described respectively as aforesaid; that they, and each of them, and each of their officers, agents, servants, lessees, and employees, and each of them, be forever enjoined and restrained from working or mining upon, or cutting timber trees from, or removing any timber from, or intermeddling with said claims, or either of them, or the franchises, appurtenances, or privileges thereto belonging, or in any wise appertaining.

May it please your honors that a temporary writ of injunction in this behalf may be issued pending the proceedings herein; and that the writ of subpœna in chancery may issue herein, directed to said defendants, and each of them, commanding them, and every of them, to appear and answer all and singular the premises, and abide the order, judgment, and decree of the court in the premises; and also commanding the marshal of said district, that he serve and execute said writs, and make his return thereon according to the rules and practice of this honorable court.

(S'g'd) BENJAMIN HARRIS BREWSTER,
Attorney-General.

ANDREW W. BRAZEE,
Attorney of the United States in and for the District of Colorado.

19 (Endorsed:) No. 1150. United States circuit court. The United States vs. The Iron Silver Mining Co. and James A. Sawyer. Bill of complaint. Benj. Harris Brewster, Attorney-General. Andrew W. Brazee, U. S. attorney. Filed Mar. 23, 1883. (S'g'd) Edward F. Bishop, clerk.

And the said subpœna is in words and figures as follows, to wit:

Subpœna.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States of America to the Iron Silver Mining Company and James A. Sawyer, greeting:

You and every of you are hereby commanded, that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in May next (it being the 7th day of May, A. D. 1883), to answer the bill of complaint of the United States of America this day filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judg-
20 ment being pronounced against you by default, and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return:

Witness, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver aforesaid, this 23rd day of March, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the 107th year.

(S'g'd) EDWARD F. BISHOP,
[Seal U. S. Cir. C't Colorado.] *Clerk.*

Memorandum.

The above-named defendants are hereby notified that unless they and each of them shall enter their appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

(S'g'd) EDWARD F. BISHOP,
Clerk.
By WM. E. ROGERS,
Deputy Clerk.

Marshal's return.

DISTRICT OF COLORADO, *ss:*

LEADVILLE, *April*, 1883.

21 I have duly executed the within writ by delivering to the within-named defendant, James A. Sawyer, personally, a true copy of the

within writ, at or near Soda Springs, county of Lake, on the 7th day of April, A. D. 1883.

(S'g'd) WALTER A. SMITH,
Marshal.
By DAVID A. COWELL,
Deputy Marshal.

Marshal's return.

DISTRICT OF COLORADO, *ss:*

DENVER, *April 10th*, A. D. 1883.

I have duly executed the within attached writ by serving same upon the Iron Silver Mining Company by personally delivering a true copy thereof to Jacob Houghton, managing director of said The Iron Silver Mining Company. Served at Leadville, Lake County, Colorado, April 4th, 1883. No president, vice-president, secretary, or treasurer of said company found in my district.

(S'g'd) WALTER A. SMITH,
Marshal.

(Endorsed:) Gen. No. 1150. Circuit court of the United States for the district of Colorado. In chancery. The United States of America vs. The Iron Silver Mining Co. et al. Subpœna returnable to rule day, first Monday in May, A. D. 1883. Edward F. Bishop, clerk. Filed this 11th day of Ap'l, A. D. 1883. (S'g'd) Edward F. Bishop, clerk, by Wm. E. Rogers, deputy clerk. Benj. Harris Brewster, Att'y-Gen'l. A. W. Brazee, dist. att'y, of Denver, complt's sol'r.

22 And afterwards and on, to wit, the 7th day of May, A. D. 1883, came G. G. Symes, esq., a solicitor of this court, and filed herein his appearance for and on behalf of the said defendants.

And the said attorney's appearance is in words and figures as follows, to wit:

Attorney's appearance.

DISTRICT OF COLORADO, *ss:*

In the circuit court of the United States for the district of Colorado.

IN RE THE UNITED STATES OF AMERICA
vs.
THE IRON SILVER MINING COMPANY ET AL. } No. 1150.

I do hereby certify that I have been retained by and appear in the above entitled cause for and in behalf of, the said defendants.

(S'g'd) G. G. SYMES,
Solicitor for Deft's, of Denver, Colo.

Dated at Denver, Colorado, this 5th day of May, A. D. 1883.

(Endorsed:) Gen. No. 1150. Circuit court, United States, district of Colorado. In the matter of The United States of America vs. The Iron Silver Mining Company et al. Attorney's appearance.—Mr. G.

22½ G. Symes, on behalf of def't. Co. et al. Filed this 7th day of May, A. D. 1883. (S'g'd) Edward F. Bishop, clerk. Ent'd. Co. B. 301.

And afterwards, on, to wit, the 4th day of June, A. D. 1883, came the said defendants, by G. G. Symes, esq., their solicitor, and filed in said court and in said cause their demurrer to the bill of complaint heretofore filed herein. And the said demurrer is in words and figures as follows, to wit:

Demurrer.

In the circuit court of the United States for the district of Colorado, in the eighth circuit.

THE UNITED STATES OF AMERICA
vs.
THE IRON SILVER MINING COMPANY AND James A. Sawyer. } Demurrer.

The demurrer of the Iron Silver Mining Company and James A. Sawyer to the bill of complaint of the United States of America, complainants.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true, in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto, and for cause of demurrer show that the said complainant hath not in or by its said bill of complaint made or stated such a case as entitles it in a court of equity to any relief from or against the said defendants, touching the matters contained in the said bill, or any of such matters.

23 And the said defendants, for a further cause of demurrer, state that it does not appear in and by the said bill of complaint, or any of the matters therein set forth, that the said plaintiff, the United States, has been defrauded in any manner, matter, or thing by reason of any of the averments in the said complainants' bill.

And for a further cause of demurrer, said defendants say that it does not appear in or by any of the allegations or matters set forth in the said bill that the said United States patents for the said placer mining claims ought to be set aside or vacated.

And for a further cause of demurrer, said defendants say that in case the allegations in the said bill contained were true as therein set forth, which they do not admit, the said bill contains not any matter of equity whereon to sustain a writ of injunction, as is sought and prayed for in the said bill.

Wherefore and for divers other good causes of demurrer these defendants doth demur to said bill and all the matters therein contained, and humbly pray whether they shall be compelled to make any other or further answer, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

I certify that in my opinion the foregoing demurrer of the said defendants to the said bill of complaint of the said complainants is well founded in law and proper to be filed in the above action.

(S'g'd) G. G. SYMES,
Solicitor & Counsel for Defendants, of Denver, Colo.

24 STATE OF COLORADO,
County of Lake, ss:

W. Arens, being duly sworn, doth depose and say that he is the agent and attorney in fact for the said defendant, the Iron Silver Mining Company; that he has heard read the foregoing demurrer to the complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

(S'g'd) W. ARENS.

Subscribed and sworn to before me this 27th day of April, A. D. 1883.

[SEAL.] (S'g'd) J. E. MCGREW,
Notary Public.

(Endorsed:) 1150. In U. S. circuit court. The United States of America vs. The Iron Silver Mining Co., James A. Sawyer. Demurrer to complaint. Filed Jun. 4, 1883. (S'g'd) Edward F. Bishop, clerk. G. G. Symes, att'y for def't.

And afterwards, and on, to wit, the 22nd day of June, A. D. 1883, the same being one of the regular juridical days of the May term, A. D. 1883, of said court (present, the honorable George W. McCrary, circuit judge), the following proceeding was had and entered of record in said court and in said cause, to wit:

25 *Order.—Demurrer overruled.—Defendants to answer in thirty days.*

THE UNITED STATES OF AMERICA *vs.* THE IRON SILVER MINING COMPANY AND James A. Sawyer.	1150. In chancery. To cancel patent for an injunction and other relief.

At this day comes the said complainant, by A. W. Brazee, esq., its solicitor, and the said defendant, by G. G. Symes, esq., their solicitor, also come. And the demurrer of the said defendant to the bill of complaint herein, having heretofore come on to be heard, and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it seemeth to the court here that the said bill of complaint and the matters and things therein contained is sufficient in law, and so the said demurrer is overruled.

And thereupon, on motion of the said complainant, it is ordered by the court that the said defendants answer herein within thirty (30) days from this day.

And afterwards, and on, to wit, the 10th day of September, A. D. 1883, the same being in vacation preceding the October term, A. D. 1883, of said court, at chambers, before the honorable Moses Hallett, district judge, the following proceeding was had and entered of record in said court and in said cause, to wit:

26 *Order: Extending time to answer.*

THE UNITED STATES OF AMERICA *vs.* THE IRON SILVER MINING COMPANY and James A. Sawyer.	1150. In chancery. Bill to cancel a patent, and for other relief.

Now, on motion of the defendants herein made, it is hereby ordered

that the defendants have until the 20th day of September, 1883, in which to file their answer herein.

Dated this 5th day of September, A. D. 1883.

(Signed) MOSES HALLETT,
District Judge.

And afterwards, and on, to wit, the 1st day of October, A. D. 1883, came again the said defendants, by their solicitor aforesaid, and filed in said court and in said cause their answer to the bill of complaint heretofore filed herein. An the said answer is in words and figures as follows, to wit:

Answer.

In the circuit court of the United States, for the district of Colorado, in the eighth circuit.

THE UNITED STATES OF AMERICA, complainant,
vs.
THE IRON SILVER MINING COMPANY and James A. Sawyer, defendants.

27 The answer of the Iron Silver Mining Company and James A. Sawyer, defendants, to the bill of complaint of the United States of America, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception, which may be had or taken to the many errors, uncertainties, and other imperfections in the complainant's bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, for answer saith:

These defendants admit that on or before the 12th day of November, A. D. 1879, the said complainant was, and for many years had been, the owner in fee of the several parcels of land described in the said bill of complaint, and that it embraced a portion of the unsurveyed public domain of the United States; and admit that it was mineral land, situated in California mining district, in the county of Lake, and State of Colorado, and in the land district subject to sale at Leadville, Colorado; and admit that said land is described by metes and bounds, as set forth in the said bill of complaint; and admit that the said placer claim, called the Stimson placer claim, contained one hundred and twenty-four and twenty-five hundredths of an acre of land, more or less; and admit that said Fanchon placer claim contained one hundred and thirteen and thirteen hundredths of an acre of land, more or less, as stated in said bill of complaint.

28 And defendants admit that there was some timber growing upon the said mineral land at the time of the location of the said placer claim, and the application for the said placer patents described in the said bill of complaint; but aver that there was not a thrifty or valuable growth of timber upon the said land, but quite a quantity of timber that would answer for mining purposes.

And these defendants deny that within the said placer claims or either of them, as described in said bill of complaint, there was contained sundry and various lodes, veins, ledges, and seams bearing silver or lead in rock in place of great value or of any value whatever; and deny that there were at the time of the application for the said placer patents mentioned in the said bill of complaint, any known lodes, veins, or ledges, or seams of rock in place, known to exist, or claimed to exist by any person or persons whomsoever; and deny that there were any lode mining claims located upon any veins, lodes, ledges, or mineral deposits, such as are described in section 2320, within the boundaries of said placer claims at the time of the application for the said placer patents; and defendants aver that if any pretended lode claims had been located or recorded within the limits of said placer claims upon any pretended lodes, ledges, or valuable mineral deposits of rock in place, such pretended lode mining claims had no valuable deposits of quartz or other rock in place within them, and had been abandoned by any alleged claimants thereto before the date of the applications for the said placer patents.

And these defendants deny that the said tracts or parcels of land were of no value as placer mining ground, and had little or no sand, soil, gravel, drift, or deposit thereon, over rock in place from which gold, silver, 29 or other precious metals had been or could be produced or extracted; but the defendants aver that at different places within said tracts of land, placer and superficial deposits had been discovered, developed, and worked, and that since the issuing of the said placer patents, placer mining has been carried on within said tracts of land and placer gold has been washed out and taken therefrom.

And these defendants deny that on or about the 6th day of October, A. D. 1879, or at any other time before the applications for the said placer patents were made, the defendant, James A. Sawyer, or any other person or persons, discovered any valuable lodes, ledges, veins, or mineral deposits of rock in place, on, or within the said tracts of land, containing or carrying gold, silver, or lead, or other precious metals; but defendants aver that certain pretended lode claims may have been staked and recorded within the said tracts of land, but no discoveries of any valuable deposits of rock in place had been made thereon.

And these defendants deny that there was, at or before the date of the said application for patent within the said tract of land, any particular indications of divers other veins, lodes, or ledges carrying any such precious metals in rock in place, or any special or particular indications that any valuable deposits, or any precious metals in rock in place existed within the said tracts of land; and deny that any such indications of any such valuable mineral deposits of rock in place existed within the said tracts of land showing manifest or apparent indications to persons skilled in that behalf as experts, or to any persons; but these defendants aver 30 that there were no indications of valuable deposits of precious or other metals in rock in place, or that any such deposits could probably be developed or found within said tracts of land, and these defendants insist that any averment or charges in the said bill of complaint regarding the supposition of geological opinions of experts or others, or the supposition as to what might in the future probably be found or developed within the said land is irrelevant, impertinent, and immaterial in the said

complaint; and defendants deny that there was no placer mining ground within the said tracts of land that did or could produce any gold or silver, or other precious metals by washing or by any process of placer mining; but aver that there were superficial and placer deposits within the said tracts of land containing placer gold, and that placer gold and gold dust had been washed and taken from the said tracts of land before the applications for the said placer patents, and has since the issuing of said patents been mined from said premises.

And the said defendants deny that on the 21st day of November, A. D. 1879, or at any other time, these defendants, James A. Sawyer or Wm. H. Stevens or Levi Z. Leiter, conspired together to cheat or defraud the said complainant out of the said parcels of land, or did then and there, or at any other time, fraudulently combine, confederate, or agree or conspire with W. Arens, T. H. Reins, A. M. Rucker, M. J. David, O. S. Crowther, P. Henderson, or L. Rucker, or any other person or persons whomsoever to cheat or defraud the said complainant out of said lands, or to fraudulently obtain from said complainant a patent for said parcels or tracts of land, or either of them, upon any false pretenses whatever; but defendants aver that said defendant Sawyer did make application
31 and obtain patents for the said placer claims, as he had a legal right to do, because he had located the said tracts of land as placer claims and had found thereon placer or superficial deposits, and the said land was returned by the surveyor-general to the Commissioner of the General Land Office as mineral land and subject to entry as mineral land, in accordance with the United States statutes in such case provided.

And these defendants deny that the said applications for patent were made of the said placer patents obtained with any intent of fraudulently or otherwise securing to the said Iron Silver Mining Company or any other person or persons any benefit or advantage of the timber trees growing or being upon the said tracts of land; but these defendants aver that the said Iron Silver Mining Company, being a corporation carrying on mining business and operations, would have the right, under the United States statutes, to cut or appropriate any such timber upon the public domain of the United States for mining purposes without obtaining or having any interest in any patent for the land upon which such timber might be found.

And these defendants deny that the said applications were made for or the said placer patents obtained with the understanding or purpose of securing to the said Iron Silver Mining Company or to any other person or persons fraudulently or in any way, or upon any pretense, the exclusive or any benefit or any rights to fissures, lodes, ledges, veins, or leads or deposits of rock in place, bearing silver, gold, or other precious metals; and deny that in order to obtain any lodes, fissures, leads, veins, ledges, or deposits, in rock in place, at a less rate than said complainant was entitled to receive for the same, or fraudulently or in any way conspired
32 or confederated or agreed to or with any person or persons whomsoever to falsely represent to the register or receiver of the land office or to the officers of the General Land Office that said parcels or tracts of land contained placer-mining ground or were subject to entry as such placer ground; but these defendants aver, as hereinbefore mentioned, that the said tracts of land were and are placer-mining land and contain placer

or superficial deposits carrying gold dust, from which placer gold had been washed and mined before the said applications for said placer patents and since; and defendants deny that said tracts of land or any part thereof were subject to entry or patent as lode claims, or that lode claims could have been legally located or patented within said tracts of land at the time of application for and issuing of the said placer patents.

And these defendants admit that said defendant Sawyer did stake certain so-called lode claims described in the said bill of complaint, and did make out and record location certificates thereof as stated in the said bill of complaint, at or about the times therein set forth, within the boundaries of the said tracts of land; but these defendants aver that within the said pretended lode claims there had been no discovery of any valuable deposits, or of any deposits of quartz or other rock in place carrying gold, silver, lead, or other valuable deposits, and aver that no discovery whatever had been made, or any valuable deposits of quartz or other rock in place within the said pretended lode claims, or within the boundaries of the said tracts of land or placer claims; and defendants aver that before the applications for the said placer patents the United States deputy mineral surveyor made a careful examination of all the developments upon any pretended
33 lode claims which had been staked or recorded within the boundaries of the said placer claims, and found that there had not been discovered or developed within the said lode claims, or within the limits of said placer claims, any veins or lodes of quartz or other rock in place carrying gold, silver, cinnabar, tin, or other valuable deposits, or any such valuable mineral deposits of rock in place as is described in sec. 2320 of the Revised Statutes of the United States; and the said United States deputy mineral surveyor so reported in his report of the survey of said placer claims to the surveyor-general of Colorado.

And these defendants deny that on the 6th day of October, 1879, or at any other time there was any conspiracy or inception of any conspiracy or confederation between W. H. Stevens, Levi Z. Leiter, and James A. Sawyer, or any other person or persons connected with the said placer locations or patents; but said defendants admit that said defendant Sawyer did make an agreement with Wm. M. Stevens and Levi Z. Leiter in regard to the obtaining of placer patents for the said placer locations which he had before located and became the owner of the legal and possessory title thereof; and defendants aver that the said Sawyer after prospecting upon said lode claims for some time, and after having them carefully examined by others, who were experts in prospecting for valuable deposits of rock in place, came to the conclusion that no lodes, veins, or ledges, of valuable mineral deposits of quartz or other rock in place could be discovered or developed within the said so-called lode claims, or within the said tracts of placer-mining ground, and for that reason he proceeded to and did abandon the said lode-claim locations, and located the said tracts of land as placer-mining
34 ground; that said Sawyer proceeded to, and did prospect over large portions of the said land for placer gold, and sunk divers shafts and pit holes in the wash gravel, and panned out such quantities of placer gold as to satisfy him that the said land would pay to work as placer mines with sufficient water; that it was practicable to bring water upon the said ground, and thereupon he did locate the said placer claims, and record the same as stated in the said bill of complaint. That said Sawyer had not

sufficient means or money to pay the expenses of obtaining patents for the said tracts of land, and for this reason he did make an agreement with the said Wm. H. Stevens and Levi Z. Leiter, and by the terms of said agreement said Stevens and Leiter were to pay the expenses necessary to have the surveys and applications for patents made, and all the necessary expenses for obtaining the said placer patents, and after the said patents should be obtained the said Sawyer was to retain about one-fourth of the said land, to be selected by him, and was to deed the balance of said placer land to said Stevens and Leiter.

That said agreement was made in good faith for the purpose of obtaining the legal title to the said mineral from the Government, and said agreement was carried out in good faith by defendant Sawyer conveying to the said Stevens and Leiter the portion of the said land he had agreed to in consideration of their advancing and paying the money necessary to have the surveys made and to obtain the said patents from the United States.

And these defendants deny that the said Sawyer was to receive any certain wage or reward in consideration of his looking after any
35 timber on the said land. But the defendants admit that the said Stevens and Leiter did assist the said Sawyer by the payment of money and otherwise, in accordance with the above-mentioned agreement, to do the work necessary to have the said surveys made, and to have the said claims located in a legal mode and to made the said application and obtain the said patents. But defendants deny that there was any fraud or conspiracy, or deceit of any kind whatever practiced or contemplated in connection with the said placer claims, or the obtaining of the said placer patents; and admit that said defendant Sawyer and Leiter and others in their employ did relocate the said placed claims on the 5th day of December, A. D. 1880, for the purpose of making their locations conform to the statute in such cases, and for the purpose of obtaining patents therefor in accordance with their said agreement above mentioned; and admit that the said Arens, Reins, Rucker, David, Crowther, Henderson, and Rucker did locate the claims in their individual names within the said tracts of placer ground, and did afterwards convey all the interest which they acquired by such location to the said James A. Sawyer, but deny that it was in pursuance of any fraudulent or other conspiracy or confederation of any kind.

And defendants admit that on, to wit, the 11th day of February, A. D. 1880, the said James A. Sawyer did file in the land office of your orators, register and receiver at Leadville, his application for patent for the said Stimson and Fanchon placer claims, together with the papers and documents required by law and the rules and regulations of the land office in such cases; and admit that said Sawyer did represent in said applications for patents, and the affidavits and documents accompanying the
36 same, that the said Stimson and Fanchon placer claims were placer mining ground, and that no known veins or lodes of quartz or other rock in place bearing gold, lead, or silver at that time existed thereon, and that the labor and improvements done upon said placer claims by the said applicant exceeded five hundred dollars in value upon each of said placer claims, and that said improvements consisted of pits, shafts, and open cuts, as shown upon the accompanying plats to said application and

field notes of the surveyors, and defendants deny that any of said statements, or representations, or affidavits in said applications or any of the papers accompanying said applications for said placer patents were false or untrue in any part; and avers that there were no known veins or lodes of quartz or other rock in place bearing gold, silver, lead, or other valuable deposits; that the labor and improvements thereon did at that time exceed five hundred dollars on each of said claims.

And these defendants deny that in truth or in fact the said Stimson and Fanchon placer claims were not, or either of them placer, mining ground; and deny that there were known veins or lodes of quartz or other rock in place bearing gold, silver, or other valuable deposits within the said placer claims at the date of said applications for patents; and deny that the labor and improvements on said claims did not exceed or equal five hundred dollars on each of said placer claims; and deny that no placer mining improvements had been made upon said claims, or either of them, at the time of filing said applications, save or except two or three sluice boxes in Buffalo Gulch; and deny that the placer mining improvements thereon had been abandoned before said applications for said placer patents
37 were made, because the same could not be made to yield any valuable returns; deny that the said improvements upon the said placer claims did not exceed in the aggregate thirty dollars; but aver that the pits, shafts, and open cuts mentioned and described as the improvements in said applications for patents exceeded the sum of five hundred dollars on each of said claims; and aver that the said pits, shafts, and open cuts were all made in prospecting for and developing placer deposits.

And the defendants admit that the said Stevens and Leiter and the defendant company have cut a considerable amount of timber from the said tracts of land and used it for mining purposes in timbering their extensive mines in California mining district in said county and State, both before and since the said placer patents were issued; and defendants aver that they had the legal right to cut the timber and use the same for mining purposes under the statutes of the United States, when the said land was public domain of the United States, and had the legal right to cut and convert the same to their own use after they obtained title to the said land as hereinbefore set forth.

And these defendants admit that due notice was given and publication made, and the applications posted upon the claims, and upon the bulletin board in the said land office, regarding the said applications for patents as required by the statute in such cases; but deny that the said register and receiver in the said lane office was deceived or misled in any way; and deny that the said register and receiver believed any false or fraudulent representations, and aver that no false or fraudulent representations of any kind were made in connection with the said applications for the said placer patents.

38 And these defendants admit that on, to wit, the 27th day of April, A. D. 1880, the said defendant, James A. Sawyer, was allowed to, and did, make entry of the said Stimson and Fanchon placer claims, as stated in the said bill of complaint; and admit that on, to wit, the 15th day of June, A. D. 1881, the said complainant did issue a patent for the said Stimson placer claim, and admit that on, to wit, the 27th day of November, A. D. 1881, the said complainant did issue its patent

to the said defendant Sawyer for the said Fanchon placer claim, as averred in said bill of complaint, and admit that the said patents are recorded in the recorder's office of Lake County, Colorado.

And these defendants deny that the said patents were fraudulently or wrongfully obtained or issued in any way whatever; and defendants admit that on, to wit, the 7th day of February, A. D. 1882, the said defendant Sawyer did convey to the said defendant, The Iron Silver Mining Company, the said tracts of placer ground, save and except certain portions of said land reserved to the said defendant Sawyer in accordance with the said agreement hereinabove set forth.

And these defendants deny that divers or sundry persons, or any person or persons whomsoever, have any claims or liens upon said premises or tracts of land, or any part thereof, of any kind or nature whatever. These defendants deny that the said patents are a cloud upon the title to said lands, but aver that the said patents convey the legal title in fee to the said James A. Sawyer, and that by virtue of the said conveyances and deeds these defendants are now the owners of the legal title in fee simple to the said premises.

These defendants deny that the said Iron Silver Mining Company
39 knew or had any knowledge of any fraudulent or other conspiracy or confederation, or of any fraudulent pretenses or representations regarding the applications for the said placer patents, or the obtaining of the same, and deny that there were any fraudulent representations or falsehoods, or fraud or conspiracy or confederation of any kind in connection with the applications for or the obtaining of the said placer patents.

And the said defendant company further avers that on, to wit, the 6th of March, A. D. 1880, it purchased from the said Wm. H. Stevens and Levi Z. Leiter that portion of the said Stimson and Fanchon placer claims conveyed by the said James A. Sawyer to the said Stevens and Leiter, as mentioned in the said bill of complaint; that at the time of such purchase the said defendant company was a duly organized corporation under the statutes and laws of the State of New York, and authorized to do business and carry on mining operations and purchase and sell mining property in the State of Colorado; that said mining property was purchased with other mining real estate from the said Stevens and Leiter for a valuable consideration, to wit, for the sum of $——, which said consideration was then and there paid by the said defendant company to the said Stevens and Leiter; that the said defendant company, before or at the time of the said purchase and conveyance of the said placer mining property, had no notice whatever that the said locations of the said placer claims had not been properly or legally made, and that the entries and patents for the said claims were not or could not be legally obtained; that the defendant company was a bona fide pur-
40 chaser of the said property for a valuable consideration without any notice of any of the matters impeaching the said locations of the said placer claims, or the applications therefor, or attaching fraud to them in any way, and without any reason to believe or suspect that there was any fraud or conspiracy or illegality of any kind connected with the locations of the said land as placer-mining land and the applications for and obtaining of the said placer patents; that the said deed of convey-

ance conveying the said portions of the said tracts of land by the said defendant Sawyer to the said Stevens and Leiter and by the said Stevens and Leiter to the said defendant company were placed on record in the county recorder's office of Lake County; that the shares of stock of the defendant, The Iron Silver Mining Company, is held and owned by a large number of stockholders residing in different parts of the country, to wit, five hundred stockholders, who are bona fide purchasers of such stock for a valuable consideration, and who purchased the said stock bona fide, believing that the title to the said placer ground was absolute and free from any attacks that could or would be made upon it by the said complainant or any other persons.

And these defendants deny all manner of unlawful combination, confederacy, wherewith they are charged in the said bill; without this, that there is any other matter, cause, or thing in the said complainant's bill contained material or necessary for these defendants to answer unto and not herein well and sufficiently answered, confessed, traversed, avoided, or denied, is not true to the knowledge or information of these defendants;

all of which matters and things these defendants are ready and
41 willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(S'g'd) G. G. SYMES,
Solicitor for Defendants and of Counsel.

STATE OF COLORADO,
County of Lake, ss:

James A. Sawyer, being duly sworn, on oath deposes and says, that he has heard read the foregoing answer and knows the contents thereof; that he is familiar with the matters and things therein set forth, and that the same is true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

(S'g'd) JAMES A. SAWYER.

Subscribed and sworn to before me this 29 day of September, A. D. 1883.
[Notarial seal.] (S'g'd) J. F. FRUEAUFF,
Notary Public.

(Endorsed:) 1150. In U. S. circuit court. The U. S. of America vs. The Iron Silver Min'g. Company and James A. Sawyer. Answer. Filed Oct. 1, 1883. (S'g'd) Edward F. Bishop, clerk. G. G. Symes, att'y for def'ts.

42 And afterwards, and on, to wit, the 31st day of January, A. D. 1884, the same being one of the regular juridical days of the October term, A. D. 1883, of said court (present, the Honorable Moses Hallett, district judge), the following proceeding was had and entered of record in said court and in said cause, to wit:

Order.—Motion to strike out parts of answer denied.—Leave to file replication.

THE UNITED STATES OF AMERICA *vs.* THE IRON SILVER MINING COMPANY AND JAMES A. SAWYER.	1150. In chancery. Bill to cancel a patent, and for other relief.

At this day comes the said complainant, by A. W. Brazee, esq., its solicitor, and the said defendants, by G. G. Symes, esq., their solicitor, also come.

And the motion of the said complainants to strike out parts of the answer of the said defendants herein, coming on now to be heard, is argued by counsel, and the court being now sufficiently advised in the premises:

It is ordered by the court, for good and sufficient reasons to the court appearing, that the said motion be denied.

And thereupon it is ordered by the court that the said complainant file herein its replication forthwith.

And, on motion of the said complainants, it is ordered that the said complainants have sixty (60) days to take proof herein.

43 And thereupon, and on the same day, to wit, the 31st day of January, A. D. 1884, came again the said complainant, by A. W. Brazee, esq., its solicitor, and filed in said court and in said cause its replication to the answer heretofore filed herein.

And the said replication is in words and figures as follows, to wit:

Replication.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States in and for the district of Colorado.

THE UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE IRON SILVER MINING COMPANY AND JAMES A. SAWYER, DEFENDANTS.	No. 1150.

The replication of the said complainant to the answer of the said defendants.

44 This complainant saving and reserving unto itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for a replication thereunto says that it will ever maintain

and prove its said bill of complaint to be true and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain and insufficient to be replied unto by this replicant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto and not herein well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this replicant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

(S'g'd) BENJAMIN HARRIS BREWSTER,
Attorney-General.

ANDREW BRAZEE,
Attorney of U. S. Dist. of Colo.

(Endorsed:) No. 1150. U.S. Circuit Court. In equity. The United States vs. The Iron Silver Mining Co. and James A. Sawyer. Replication. A. W. Brazee, U. S. att'y. Filed Jan. 31, 1884. (S'g'd) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 17th day of November, A. D. 1884, the same being one of the regular juridical days of the October term, A. D. 1884, of said court (present, the Honorable Moses Hallett,
45 district judge), the following proceeding was had and entered of record in said court and in said cause, to wit:

Order to open, publish, and file depositions.

THE UNITED STATES OF AMERICA *vs.* THE IRON SILVER MINING COMPANY et al.	1150. In chancery. Bill to cancel a patent, and for other relief.

At this comes the said complainant, by A. W. Brazee, esq., district attorney, and thereupon, on its motion, it is ordered by the court that the depositions in this cause now in the clerk's office be opened, published, and filed, and that the said district attorney may take the said depositions from the clerk's office and retain the same for five days.

And thereupon, and on the same day, to wit, the 17th day of November, A. D. 1884, there was opened, published, and filed in said court and in said cause a certain deposition of William H. Stevens on behalf of the respondent. And the said deposition is in words and figures as follows, to wit:

Deposition of William H. Stevens.

The deposition of WILLIAM H. STEVENS, of the county of Wayne, and State of Michigan, a witness of lawful age, produced, sworn, and examined upon his corporal oath on the 31st day of May, A. D. 1884, at the office of Herschel Whitaker, in the city of Detroit, in the county of Wayne, and State aforesaid, by me, Herschel Whitaker, a commissioner
46 duly appointed by a dedimus potestatum, issued out of the clerk's office of the circuit court of the United States for the district of Col-

orado, bearing teste in the name of the Chief Justice of the United States and the seal of said court affixed thereto, and to me directed as such commissioner, for the examination of the said William H. Stevens, a witness in a certain suit and matter in controversy now pending and undetermined in the said circuit court, wherein the United States of America is plaintiff, and the Iron Silver Mining Company is defendant, in behalf of the said defendant, as well as on the cross-interrogatories of the plaintiff, as upon the interrogatories of the defendant which were attached to the said commission, and upon none other, the said William H. Stevens being first duly sworn by me as a witness in the said cause previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he shall be interrogated, testified and deposed as follows:

Interrogatory first. State your name, age, residence, and occupation.

Answer. William H. Stevens; age, 63; residence, Detroit, Michigan; occupation, miner.

Interrogatory second. Do you know the Fanchon and Stinson placer claims? If so, state when you first knew them.

Answer. Yes, sir; about June 1st, 1879.

Interrogatory third. State what you know about the said Stin-
47 son and Fanchon placer claims with reference to the character of the ground; whether it is placer mining ground or not.

Answer. The ground was a rolling, uneven surface, with gulches, ravines, and small streams passing through it, and was covered with a young and second thrifty growth of timber. I examined the pit-holes, openings, and excavations upon said land and found that the sand and gravel therein contained float or placer gold; I should classify the land as placer land.

Interrogatory fourth. State particularly whether you examined the said mining ground for the purpose of determining its character as to whether it was placer mining ground or lode mining ground, and your decision and opinion in that regard.

Answer. Yes, sir; I crossed and recrossed the ground several times, and examined all the shafts, pit-holes, and excavations upon said land with care in regard to their mineral value, and decided that there were no lodes, veins, ledges, or mineral deposits of rock in place, bearing gold, silver, *gold*, lead, cinnabar, copper, or other minerals of value; that it was wasting time and money to attempt to find or discover mineral veins of value there, but that the only mineral of value I found was float gold in the diluvial deposit of sand and gravel, and my decision and opinion was and is that it was placer mining ground.

Interrogatory sixth. State if you, at any time, made an examination of said ground, and of any streams of water near, with a view of de-
48 termining the practicability of bringing water through a ditch for placer mining purposes, to the said placer claims, and, if you made such an examination, what conclusion did you come to with reference to it?

Answer. I made such an examination with pocket instruments, going all over the ground, and found that the waters of Lake Creek could be easily carried in ditches and flumes to cover, work, and wash said placer lands.

Interrogatory seventh. State whether or not it is practicable to bring water on said mineral lands to be used for placer mining purposes.

Answer. Yes, sir; I have no doubt about it.

Interrogatory eighth. State particularly what you know about whether there were any known lodes, veins, ledges, or mineral deposits of rock in place, bearing silver, gold, lead, or other valuable deposits within said placer mining claims before the date the said applications were made for the said placer patents, to wit, on the ——, 1879, ——.

Answer. Prior to June 10th, 1879, the date of location of these placer claims, I examined all shafts and pit-holes on said placer lands, for the purpose of determining whether there were any lode veins, and found that there were no known or discovered lodes, veins, ledges, or mineral deposits of rock in place, bearing silver, gold, lead, or other valuable deposits within said placer mining claims at that time.

49 Interrogatory ninth. State what connection, by furnishing money or otherwise, you had with obtaining the said placer patents.

Answer. After deciding that it was placer ground and practicable to bring water upon it, Mr. Leiter and myself accepted of a proposition from Mr. Sawyer to furnish him money in order to make the necessary explorations, improvements, and entry of application for Government patent; he, Sawyer, to do all the work and obtain title for a share in the property.

Interrogatory tenth. State the object and purpose that you, or any one connected with you, had in assisting said Sawyer in applying for and obtaining said placer patents.

Answer. Our object and purpose in assisting said Sawyer was to obtain an interest in said placer lands, being convinced of its character as such.

Interrogatory eleventh. State whether or not you and your partner Leiter furnished the money to assist said Sawyer to perform the and make the improvements necessary to obtain said placer patents, in good faith, and for the purpose of obtaining title to the said ground for placer mining purposes.

Answer. Yes, sir; we did.

Cross-interrogatories and answers thereto by the witness on the part of the plaintiff:

Cross-interrogatory first. To what extent were you interested in
50 the capital stock of the Iron Silver Mining Company, defendant in the action in the annexed commission mentioned, at the time of its organization, and to what extent are you interested now; if at all interested, state what proportion of the capital stock you then owned and proportion you now own, and the whole amount of the capital stock of said company.

Answer. My interest in the capital stock of the Iron Silver Mining Company at the date of its organization was about one-fifth; it has varied but little since. The capital stock of the company is divided in 500,000 shares.

(S'g'd) W. H. STEPHENS.

Subscribed and sworn to before me, this 31st day of May, 1884.

[SEAL.] (S'g'd) HERSCHEL WHITAKER,
U. S. Commissioner, Eastern District of Mich.

I, Herschel Whitaker, of the county of Wayne and State of Michigan, a commissioner duly appointed to take the deposition of the said William

H. Stevens, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Wm. H. Stevens as a witness in the said suit between the said United States as plantiff and the Iron Silver Mining Company et al., as defendants, he was duly sworn by me, to testify the truth in relation to the matters in controversy between the said parties, so far as he should be interrogated concerning the same; that the said deposi-
51 tion was taken by my clerk F. Woodruff and reduced to writing by F. Woodruff at the office of the undersigned in the city of Detroit, in the county of Wayne and State of Michigan on the *on the* 31st day of May, A. D. 1884, and that after the deposition was taken by F. Woodruff as aforesaid, at my direction, the interrogatories and answers thereto as written down were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, William H. Stevens, before me, at the place on the day and year last aforesaid.

[SEAL.] (S'g'd) HERSCHEL WHITAKER,
U. S. Commissioner for the Eastern District of Michigan.

The United States of America.

The circuit court of the United State' for the eastern district of Michigan.

I, Walter S. Harsha, clerk of the circuit court of the United States for the Eastern district of Michigan, do hereby certify that Herschel Whitaker, whose name is signed to the foregoing jurat, is a commissioner of the circuit court of the United States for the eastern district of Michigan, duly qualified and duly authorized by law to administer oaths; that his signature thereto is genuine and in his proper handwriting.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Detroit, in said district, this thirty-first day of
52 May, in the year one thousand eight hundred and eighty-four, and of the independence of the United States of America the one hundred and eighth.

[SEAL.] (S'g'd) WALTER S. HARSHA, *Clerk.*

(Endorsed:) 1150. Circuit Court U. S. The United States vs. The Iron Silver Ming. Co. Deposition of Wm. H. Stevens, behalf respondent. Opened, published, and filed Nov. 17, 1884. (S'g'd) Edward F. Bishop, clerk.

And afterwards, and on the same day, to wit, the 17th day of November, A. D. 1884, there was opened, published, and filed in said court, and in said cause the examiner's report of testimony taken on behalf of complainant. And the said examiner's report of testimony is in words and figures as follows, to wit:

Examiner's report of testimony on behalf of complainant.

In the circuit court of the United States for the district of Colorado.
In the eighth circuit.

THE UNITED STATES OF AMERICA
vs.
THE IRON SILVER MINING CO. } No. 1150.

53 SIR: You will please take notice that the said plaintiff in the above entitled cause desires the evidence, to be adduced therein, to

be taken orally under the 67th equity rule of the United States Supreme Court.

And you will further take notice that the said plaintiff will proceed to take the testimony and depositions of witnesses in its behalf in this cause before R. H. Buck, one of the examiners of said court, at his office in the city of Leadville, county of Lake and State of Colorado, on the twentieth day of February, 1884, at 10 o'clock in the forenoon, and will continue the examination of such witnesses and the taking of such testimony, from day to day, at the same time and place, until said examination is completed, and proceed as such examiner may direct.

(S'g'd) ANDREW W. BRAZEE,
U. S. Attorney for Colorado.

To Hon. G. G. SYMES,
Solicitor and of Counsel for Def'ts.

(Endorsed:) No. 1150. In the circuit court of the United States. The United States of America vs. The Iron Silver Mining Company. Notice to take testimony. Served. I admit personal service of a notice, of which within is a duplicate, this 11th day of February, 1884. (S'g'd) G. G. Symes, sol'r for def'ts. Andrew W. Brazee, U. S. att'y for Colorado.

In the circuit court of the United States for the district of Colorado.
In the eighth circuit.

54 THE UNITED STATES OF AMERICA
vs.
THE IRON SILVER MINING COMPANY and James A. Sawyer. } No. 1150.

It is hereby stipulated that the taking of the testimony in this case before Robert H. Buck, examiner in chancery, at the city of Leadville, State of Colorado, be continued until the 21st day of April, A. D. 1884, at 10 o'clock in the forenoon of said day, at which time and place the taking of said testimony is to be resumed by the said complainant, and the evidence so taken on its behalf shall be considered of the same force and effect as that taken within the time fixed by order of the court. After conclusion of the complainants' testimony, the said defendants may proceed to take their testimony in said cause.

Dated this 9th day of April, A. D. 1884.

(S'g'd) G. G. SYMES,
Solicitor for Def'ts.
A. W. BRAZEE,
U. S. Attorney.

(Indorsed:) U. S. circuit court. The United States of America vs. The Iron Silver M. Co. et al. Stipulation extending for taking testimony ted 9th April, 1884. G. Symes, att'y for def'ts; W. Brazee, att'y for pl'ff.

55 In the circuit court of the United States, eighth judicial circuit, district of Colorado, ss:

THE UNITED STATES OF AMERICA
v.
THE IRON SILVER MINING COMPANY and James A. Sawyer. } Equity.

The depositions of David B. Stiteler, Charles Clary, Austin J. Kavanagh, Albert M. Pennock, John F. Lewis, Louis Portinan, William M. Gaar, Josiah A. Eade, Ernest Hoelke, David G. Miller, Louis K. Rucker, William B. Ragland, Robert Berry, Waldemar Arens, Percival Henderson, and John H. Heron, all witnesses of lawful age, produced on the part of the complainant in the above-entitled cause, and duly cautioned, sworn, and examined on the 20th, 21st, and 22d days of February, the 6th and 7th days of March, and the 21st and 22d days of April, A. D. 1884, by and before me, Robert H. Buck, an examiner in chancery of the said court, at my office in the city of Leadville, in the county of Lake, in said district of Colorado, pursuant to the notice and stipulations hereunto attached.

On this 20th day of February, A. D. 1884, at ten o'clock in the forenoon, I was attended by Andred W. Brazee, esq., solicitor for and on behalf of said complainant, and by J. F. Frueaff, esq., solicitor for and on behalf of said respondents.

And thereupon DAVID B. STITELER, a witness of lawful age, produced on the part of the said plaintiff, being by me first duly cautioned and
56 sworn, on oath testified as follows in response to interrogatories to him propounded by A. W. BRAZEE, esq., solicitor for said complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is David B. Stiteler; age, 49; residence, Riverside, Chaffee County, Colorado; occupation, miner; I have also had contracts in cutting wood, logs, etc.

2. How long have you been a miner in Colorado?

Ans. I have worked at it some every year since 1880.

3. In what county?

Ans. Lake County.

4. Do you know the ground embraced in the Stinson and Fanchon placers, so called; and, if so, how long have you known the same, and where are the same located?

Ans. I have known those grounds since June, 1880. They are located on what is called Sugarloaf Range. Probably 5 acres of the Fanchon placer takes in the head of Buffalo Gulch.

5. How familiarly were you acquainted with the ground embraced in those placer locations in 1880?

Ans. In 1880 I cut mining timbers for them on both those placers, more or less.

6. You say you cut timber "for them." Who do you mean by "them"?

Ans. Mr. William H. Stevens & Co. Mr. Sawyer, James A., was connected with the placer.

7. Who hired you to cut timber?

Ans. Mr. Crowthers, foreman, a boss for the Iron Mine Company.

57 8. What sort of timbers did you cut from this ground?

Ans. Mining timbers.

9. What kind of trees were growing on that land at that time?

(Objected to as irrelevant and immaterial to any issues raised by plaintiffs in this case.)

Ans. There was pine, spruce, and fir. It ranged in size all the way from 4 inches to 30 inches through. It was very fine timber, the finest timber on the range.

10. State whether you noticed any coincidence between the ground where this first timber grew, or the outboundaries of the ground where this fine timber grew, and the outboundaries of these placers;—

(Objected to as leading, irrelevant, immaterial, and an improper way of asking a question, assuming facts to exist which witness has not testified to.)

and, if so, in what respect and to what extent they coincided, if at all.

(Objected to as last above.)

Ans. The outboundaries of the placers, lines, extended round to where this green timber grew, whilst outside of it was dead timber and second-growth stuff.

11. State whether this fine body of timber covered, or substantially covered, the area of these so-called placers.

Ans. It did.

58 12. What was done with the mining timbers which you were hired to cut by the foreman of the Iron mine?

Ans. They were drawn to the Iron mine.

13. What indications of placer mining were there on the Stinson or Fanchon at the time when you first saw the ground in question?

(Objected to because there is no evidence that this witness knows the least thing about placer mining or what are indications of it, to qualify him to testify in regard thereto.)

Ans. At the time I saw it I saw no indications, although Mr. Sawyer claimed he had a sluice box in.

14. What discovery, if any, did you make of any lode or lead bearing gold or silver in rock in place on this ground in question and when?

(Same objection as to the last preceding question.)

Ans. Advance lode, discovered 9th & 10th of June, 1880.

(Deft. objects to the answer as not responsive to the question.)

15. Upon which, if either the Fanchon or Stinson ground, was this discovery made, and about where?

Ans. On the Fanchon; on the west line.

16. What did you find this Advance lode in; how wide was the vein, if any; what was the vein matter, and what the wall rock?

59 (Objected to because it is leading and presumes facts not stated by the witness or in evidence.)

Ans. I found it in quartz, between granite walls; the vein is five to six feet wide; the vein matter was quartz and gouge, containing silver and gold; the wall rock was granite.

17. What indications on the surface were there of this vein?

Ans. There were outcroppings of quartz from two to four feet high. The croppings are for probably six or eight rods, and I can follow the flow the whole length of the lead, fifteen hundred feet.

18. What was the "flow," what do you mean by "flow," and to what extent was it apparent on the surface at the time you went unto the ground of the Advance lode or claim?

Ans. The "flow-in" float, or whatever you call it, is quartz or lode matter which is contained in the lode. In some places the ground was covered with it. It was scattered promiscuously more or less all over the lode.

19. How deep have you sunk on the Advance, and to what extent is the vein continuous, if at all?

Ans. I have sunk a shaft twenty feet on it; the vein continued to increase in size a little, and also the quality of mineral was improving. I have also got a tunnel 80 feet long started to cut the lode, but not reaching it yet.

20. Do you know William H. Stevens, of the Iron Silver Mine
60 or of the Iron Silver Mining Company?

Ans. I do.

21. What, if anything, did you ever say to him about, and what, if any thing, did you ever produce to him from, this Advance lode; and what, if anything, did he say of or concerning the same?

(Objected to what witness said as immaterial, and what Stevens said or did as incompetent.)

Ans. I went to Mr. Stevens and notified him that I had found a lode on the Fanchon placer, and told him I had quartz carrying silver and gold in the lode, and he wished me to bring him some of the quartz to have assayed. I did so, and he told me his assay was better than mine. He also told me he would put up a mill that would treat that ore, and he set a time for me to meet him there. He failed to meet me on account of sickness, as they claimed. He also told me he would quitclaim that property.

22. About when was the conversation with Stevens that you have related?

Ans. It was either the latter part of August or in September, 1880.

23. When and where, if at all, did you have any conversations with Mr. James A. Sawyer of and concerning the placer claims in question or your discoveries in the Advance lode? If any, state the same fully and at large, as if particularly interrogated thereto.

61 (Objected to as irrelevant, incompetent and immaterial, unless time anterior to the entry of the placers in dispute be shown.)

Ans. I had talk on the placer claim with Mr. Sawyer, where he resided. This was in 1880; the time I was cutting timbers there. He was speaking in regard to his placers, and calling them his timber placers, and he also was to have a certain amount of that ground deeded to him individually in his own name. That portion contained 5 lode claims that he had located.

24. What portion contained the five lode claims you mention?

Ans. It was a portion of the Stinson and Fanchon placers.

25. What did he say was to be deeded to him?

Ans. He claimed there was 45 or 50 acres, I forget which, of that land that his lode claims were on that was to be deeded to him.

26. By whom did he say it was to be deeded to him, if any one?

Ans. William H. Stevens and Company.

27. What, if anything, did he say was to become of the rest of the ground of these placer claims?

Ans. He always told me I was not on his ground, but that if I was it could be arranged very easily. He told me I was in William Stevens' ground.

28. When you first saw the ground covered by these placer claims, what indications, if any, were apparent upon the surface that the same
62 contained lodes, ledges, or deposits or veins bearing gold and silver or other precious metals, and how extensively were such indications apparent on the surface of this ground?

(Objected to as incompetent, because the witness has shown no qualification whatever to testify as an expert or one having any practical knowledge of mines or mining matters.)

Ans. The indications were the croppings of quartz and lode matter, also the cropping or flow of wall rock. These indications could be discovered promiscuously, more or less, all over the placers.

And thereupon, on cross-examination by J. F. FRUEAFF, Esq., counsel for said defendant, said witness Stiteler further testified as follows:

X 1. When did you come to Colorado?

Ans. March, 1880.

X 2. Where from?

Ans. Iowa.

X 3. What part of Iowa?

Ans. Black Hawk County.

X 4. Have you ever mined before you came to Colorado?

Ans. No.

X 5. Where did you mine in 1880 in Colorado?

Ans. On Sugarloaf Mountain.

X 6 How long?

63 Ans. I couldn't give the exact time; think I worked on the Advance claim some six weeks with my brother.

X 7. Was that the first mining that you had ever done, the location and work on the Advance claim?

Ans. No, sir.

X 8. Where had you done mining before, and when?

Ans. I had prospected occasionally a day or so at a time prior to that in 1880.

X 9. How much time altogether had you worked in any mine before you located the Advance?

Ans. Oh, I might have spent two weeks prospecting at the outside.

X 10. How much time did you personally work in 1880 on the so-called Advance lode you have spoken of?

Ans. Think I worked myself about six weeks; couldn't be exact; my brother did most of the work.

X 11. How long did he work?

Ans. Couldn't give the exact time; he worked long enough to run a 50 feet tunnel. I was at home on a visit; can't tell when he commenced work.

X 12. How much work had you done before he commenced, and what was it?

Ans. I had sunk one shaft about 10 feet, and another in quartz or lead matter about 12 or 14 feet.

X 13. How near were these shafts together?

Ans. Might have been 30 feet apart. I don't know the exact
64 distance.

X 14. Which did you dig first?

Ans. We dug the one farthest down the range, the shallowest, first.

X 15. How deep did you dig that?

Ans. It might have been ten feet, more or less; I could not say exactly.

X 16. What was the size of this shaft?

Ans. It might have been 4x8, or more or less; I couldn't tell.

X 17. Did you timber it?

Ans. No, sir.

X 18. In what part of the shaft did you find the mineral matter in rock in place?

Ans. I didn't find it in that one in place.

X 19. Did you put a discovery stake at the first shaft?

Ans. No, sir; it don't stand at the first exactly.

X 20. How long after you finished the first shaft did you commence the second one?

Ans. I think my brother commenced on it right away; I am not positive on it any more.

X 21. Did you work in the second shaft personally?

Ans. I did, with my brother.

X 22. How deep was it when you commenced working in it?

Ans. It might have been four feet, more or less.

65 X 23. How deep was it when work was stopped on the second shaft?

Ans. Somewhere from 12 to 14 feet, I guess.

X 24. What was the size of the shaft?

Ans. Probably about 5x8; might have been a little more or less.

X 25. Was it timbered?

Ans. No, sir; it was solid lode matter.

X 26. Did you put a discovery stake at that second shaft?

Ans. I did not. My brother did.

X 27. Was that done before you commenced work on the second shaft?

Ans. Yes, sir.

X 28. At what place on this second shaft did you see the vein?

Ans. It is vein matter cropping clear to the surface.

X 29. On what sides of the shaft is the solid granite you spoke of?

Ans. In that shaft I have not got the walls.

X 30. At what place on the Advance lode have you got the vein matter between walls of granite?

Ans. In a shaft that I sank last winter, in 1882.

X 31. Is that shaft sunk in 1882 on the Advance ground?

Ans. Yes, sir.

X 32. What part of it?

66 Ans. It is just west of the old shaft; a little north; might be forty feet; can't say exactly.

X 33. In none of the shafts in the Advance lode sunk in 1880 did you find vein matter in solid formation between granite walls, did you?

Ans. No, sir.

X 34. Then the answer given by you to question 16 was incorrect, was it?

Ans. The question never was asked me when that was found.

X 35. Then you don't want the answer I have just read to question 16 to be undertood as meaning anything you found in a shaft on the Advance lode before the winter of 1882, do you?

Ans. No, sir; not before 1882.

X 36. Was the mining you have described as done on the Advance lode in 1880 and the little prospecting before it all the mining you did that year?

Ans. It was.

X 37. What mining did you do in 1881, and where and when?

Ans. I worked on a tunnel in the Advance in 1881, probably four weeks.

X 38. Did you in that year, 1881, do any other mining; if so, where and when, and how much?

Ans. I did some prospecting; occasionally a few days; perhaps three or four weeks altogether through the season. I did some of it over beyond Eagle Mountain.

67 X 39. What mining did you do in 1882, where and when?

Ans. I did some work on the Advance. Sank a shaft there, and also run a tunnel 20 feet farther. That's all. No other work that year as a miner.

X 40. What work as a miner did you do, and where and when, in 1883?

Ans. I did some work on the North Slope lode on Sugarloaf Mountain for myself. Probably worked round there between 2 & 3 months all told. Might have been more or less.

X 41. Have you stated now all the times and places at and in which you have worked as a miner since March, 1880, until this time; and, if not, state when and where else you have done so?

Ans. That is all, I believe.

X 42. Have you ever worked for anybody for wages or under contract as a miner?

Ans. I have as timberman, not as a miner.

X 43. Did you ever work as timberman under ground?

Ans. A few times. I worked framing timbers on the surface.

X 44. How many days, where and when, and for whom did you work under ground in a mine?

Ans. I couldn't give the exact amount of time. About all the work I ever did under ground was for myself.

X 45. For whom did you work under ground other than yourself?

Ans. I never framed any timbers under ground.

X 46. Did you ever work under ground, and, if so, when, where, and how long, for anybody else than yourself?

68 Answe.r I never did, only to take dimensions of timbers under, ground.

X 47. How many times did you go underground in anybody else's employ than yourself to take dimensions of timbers?

Ans. One time.

X 48. When was it and who for?

Ans. It was last spring or latter part of winter, for Major Ragland, at the Gunnison mine.

X 49. Have you stated all the sources of knowledge you have had in regard to a knowledge of mining matters, float, veins, and placers?

Ans. I don't know as I have exactly.

X 50. What others have you had?

Ans. From observations of the workings and eruptions, &c.

X 5. What eruptions have you observed that have given you mining knowledge other than that already related?

Ans. I guess it is the same in substance as I have given.

X 52. Is not your real business and occupation that of a wood chopper and not a miner?

Ans. You might call me a rough carpenter, rail splitter, or a mining timber cutter or anything of that kind.

X 53. Do you think you can correctly and truthfully call yourself a miner?

Ans. I think I can better than a great many that claim to be miners.

X 54. How many acres are in the Fanchon placer?

Ans. I don't know exactly. Something over a hundred.

69 X 55. How many, as near as you can tell?

Ans. I can't tell. I think I have heard them say 111 or 121.

X 56. How many sides has the Fanchon placer?

Ans. Couldn't tell exactly. It is in a kind of zigzag shape.

X 57. How many corners has it?

Ans. I think I have seen six different stakes.

X 58. Was that all there were?

Ans. I couldn't tell you.

X 59. How much of the Fanchon placer extends up Sugarloaf Mountain?

Ans. The south line runs up over what they call Sugarloaf Mountain, that is the line on the south side.

X 60. Does the south line go to the top of the mountain and over it?

Ans. I don't know exactly in regard to that.

X 61. How much of the Fanchon placer extends down into Buffalo gulch and across it?

Ans. I should judge about 5 acres of the head of the gulch heads into the Fanchon.

X 62. Did you ever go along the boundary lines of the Fanchon placer from corner to corner?

Ans. I have not fully.

X 63. Is the whole of the so-called Advance lode on the Fanchon placer?

Ans. Not quite, I believe. I think there is a little off.

70 X 64. What proportion is off?

Ans. Might be 300 feet off it in length, more or less.

X 65. Have you done any of the work heretofore described by you on that part of the Advance lode not on the Fanchon placer?

Ans. No, sir.

X 65. How many acres are in the Stinson placer?

Ans. I believe they claim 120 acres, more or less.

X 66. How many sides has it?

Ans. It is an oblong shape. I couldn't say how many sides it has.

X 67. How many corners?

Ans. I couldn't say. I have been to 5 or 6 different corners or stakes on it.

X 68. Have you ever been around the Stinson placer, the whole of it, from corner to corner?

Ans. Not direct; I have passed around on the line on the south side, on the north side of Buffalo gulch. I have travelled around a line there that was cut out, and boards nailed up there claiming it as entered land.

X 69. Do you say that there was no good green timber on Sugar Loaf Mountain outside of these Fanchon and Stinson placers?

Ans. Yes, sir; there is very good green timber outside of them.

X 70. I will read you question 10 and your answer [reads Q.
71 10 and answer]. Do you say that is correct, and there is no good green timber outside of the boundary lines of these placers?

Ans. Partially. On the south side of Buffalo gulch there was dead and second-growth timber. I don't say there is no good green timber outside the placer boundaries. There is places.

X 71. Then this answer to Q. 10 that I have read to you, and will read again [reads], is not strictly correct, is it?

(Objected to as argumentative. It assumes that there is a discrepancy in the answers of witness on direct and cross-examination, which does not exist.)

Ans. It is not strictly correct in regard to no green timber outside. There is places where there is some.

X 72. At how many different points beyond the lines of the Fanchon and Stinson placers was there good green timber to be found in 1880 when you cut timber there?

(Objected to as not cross-examination; not material nor relevant.)

Ans. Lying west of the Fanchon was a body of timber. Lying south of it there was some timber in little groves off on some points. North of it, on Lake Park Slope, was some dead timber. There was nothing east, to my knowledge.

X 73. Did you go to cut logs in 1880 on a contract?

Ans. I did.

X 74. Who was the contract with?

Ans. I had a subcontract with I. K. Marwin.

72 X 75. How long did you cut logs there?

Ans. I think from June to August, 1880.

X 76. About how many did you cut, if you recollect?

Ans. I couldn't tell, except by referring to a book which I have not here. Worked 3 or 4 men besides myself.

X 77. Did you not cut the best logs outside of these placers, that you cut that summer?

(Objected to as not material or relevant, and not proper cross-examination.)

Ans. I don't think they were any better than what I cut on the placer.

X 78. About what proportion of all you cut did you cut outside the placers?

(Objected to as last above.)

Ans. I don't know what proportion.

X 79. There was quite a large number of them, was there not?

(Objected to as last above.)

A. There was quite a number cut; yes, but I couldn't say what amount.

X 80. When and where did you have the conversation with Mr. Stevens, about the Advance-lode discovery?

Ans. At his office at the Iron Mine, in 1880; might have been in August and September, and prior to that time. Talked with him three or four times?

73 X 81. From what spot on the Advance lode did you take the vein matter to him.

Ans. From the quartz croppings, about 3 or 4 feet down the second shaft.

X 82. There were no walls surrounding the matter you took to him?

Ans. No, sir; nothing but quartz.

X 83. Was there any wash through which the second shaft had been sunk before it struck this mineral.

Ans. No, sir; the quartz crops out where we sunk it.

X 84. Who made your assay of that stuff, and when was it made?

Ans. Joseph Luce. August 23, 1880.

X 85. Was that made before you took a sample to Mr. Stevens?

Ans. Yes, sir.

X 86. When did you stop cutting timber over there?

Ans. I could not say whether it was the latter part of August or first part of September, 1880. It was some time along there.

X 87. What was the time and place at which you had the conversation with Mr. Sawyer, of which you have testified.

Ans. I couldn't tell the exact time and place.

X 88. Did he tell you about his expecting to receive a deed for a part of these placer premises, prior to 1882.

Ans. I couldn't say now.

X 89. Did you ever have more than one assay made of any matter taken by you from any of the shafts on the Advance lode?

74 Ans. I never did, except some assays I had made from some shafts which I sank last winter. Mr. Sannons made these assays. He is now in South Africa.

X 90. Did you ever have any assays made of any matter taken from any place in either the Fanchon and Stinson placers other than the one of Aug. 23, 1880, and the three in the year 1883, testified by you?

Ans. Yes, sir.

X 91. State where from, when, and by whom made, as to all of them.

Ans. They were made in Jan'y, 1883, from the North Slope lode on the Fanchon placer. They were made by Mr. Simmons.

X 92. Where on the North Slope lode were the specimens taken from that you had assayed?

Ans. From the shaft, all along from 6 feet to 25 feet below the surface.

X 93. Is that vein between walls?

Ans. Yes, sir.

X 94. Is the shaft timbered?

Ans. Yes, sir.

X 95. You commenced work in the North Slope lode and did all that has been done on it in 1883, after you knew that these were patented grounds, did you not?

Ans. I knew they claimed it as patented ground.

X 96. Are these veins you have described in the Advance and North Slope all the veins you have personally ever seen in rock in place on the premises of the Fanchon and Stinson placers?

Ans. No, sir.

X 97. State where else you have seen such, and describe.

Ans. In the Sawyers tunnel, on the Fanchon, I think.

75 X 98. How far in from the mouth of the tunnel is the lode?

Ans. Somewhere between 100 and 200 feet; I don't know exactly.

X 99. Is that all?

Ans. That is all I have seen.

X 100. How much of the North Slope lode is in the placer?

Ans. I think about half.

X 101. Since the summer of 1880 you claim to have been on these placer premises frequently and to be familiar with what has been going on there in the way of work, do you not?

Ans. Yes, sir.

X 102. Have you not been in frequent conversation with and assisting Mr. Berry as regards the testimony and the facts necessary in this suit to set aside the Stinson and Fanchon placer patents?

Ans. I have had talk with him in regard to it. I have not had frequent conversation with him; never rendered him any assistance only what I know in relation to my own matters.

X 103. Did you not first call his attention to the existence of these placers?

Ans. I did call his attention to them. I don't know whether I was the first or not.

X 104. When you called his attention to them, did he say that he had ever heard of them before.

(Objected to as improper, being hearsay.)

Ans. I don't remember.

X 105. How many times, from the first conversation you had with Mr. Berry until to-day, have you talked to him on the subject?

76 Ans. May have talked with him a dozen times, more or less.

Adjourned to Feb'y 21, A. D. 1884, at 9 o'clock a. m.

THURSDAY, *Feb'y* 21, 1884—9 o'clock a. m.

Resumed.

X 106. Is the discovery stake on the Advance still there?

Ans. It was there when I saw it last, in March or April, 1883.

X 107. How near was it to either of the two shafts you speak of having sunk there?

Ans. I couldn't tell exactly; might be within 20 feet, more or less.

X 108. Now, on your oath do you mean to say it was within 20 feet of either of those shafts?

Ans. Well, I couldn't; no, sir.

X 109. What was in the discovery shaft?

(Objected to as wholly immaterial.)

Ans. I don't remember.

X 110. Are the Advance and North Slope lodes the only claims on these placers in controversy in which you have any interest?

Ans. Yes, sir.

X 111. Did you ever work for the Iron Mine on a salary, or directly for them in a contract?

Ans. I worked for them prior to going over them, and worked for them then cooking by the day.

X 112. How many days did you work for the Iron Mine over or near these premises, and when?

Ans. I think it was in June, 1880; the number of days I cannot tell.

77 X 113. Did you not work over there all the time for Marvin, timber contractor, as a subcontractor, or in his employ?

Ans. No, sir.

And thereupon on redirect examination the said witness Stiteler further testified as follows in response to interrogatories to him propounded by A. W. BRAZEE, esq., attorney for said plaintiffs:

Redirect 1. Look at the plat marked "Exhibit A" and state whether it shows substantially the relative positions of the Stinson and Fanchon placer claims on the ground.

(Objected to as not proper subject of re-examination, and should have been introduced in chief, when an opportunity of cross-examination would have been offered.)

Ans. I think it does, to the best of my knowledge.

Redirect 2. How near to the bottom of Buffalo Gulch, the south boundary of the Stinson placer, and at what elevation above the bottom is this south line at its nearest point ascending, to your present recollection?

(Objected to, and additionally witness has been fully examined on this subject before, and further, Exhibit A, shown witness to refresh his memory, has not been explained or authenticated by any one who made it, or who has been shown competent to testify concerning it.)

Ans. I should think the south line would range from 100 to 300 feet from the bottom of the gulch, and would range in elevation all the way from 200 to 400 feet above the bottom of the gulch.

78 Redirect 3. Who, if any one, directed you where to cut timber outside of the lines of the Stinson and Fanchon claims?

(Objected to because not re-examination of any new point brought out.)

Ans. Mr. Marvin; Mr. W. Marvin.

Redirect 4. Did James A. Sawyer pretend or represent to you in any way that the lines of the Stinson and Fanchon claims extended further out and included more land than was within the stakes of those claims; and, if so, what did he say or represent to you or in your hearing on this subject, and when and where were such representations, if any, made?

(Objected to as not re-examination; the question is leading, irrelevant, and immaterial.)

Ans. There was boards nailed up with Mr. Sawyer's name on them claiming that it was entered land lying west of the Fanchon placer. He stated that the ground belonged to him. There was not anything farther, any placer else, that I know of. He made the statement in 1880 on the ground.

Redirect 5. How many men were cutting timber on the Fanchon and Stinson claims in 1880, and who were they cutting timber for, if you know, and under whose direction?

(Objected to as not re-examination and so irrelevant and immaterial.)

Ans. There was from six to eight, I believe. They were cutting under the orders of Mr. Crowthers and Mr. Marvin for the Iron mine.

Redirect 6. Who paid you for cutting timber on those claims?

79 (Objected to as not re-examination. Witness has fully testified as to his employment on those claims. Also as irrelevant and immaterial.)

Ans. Mr. I. K. Marvin.

Redirect 7. What, if anything, do you know of James A. Sawyer working in or upon lode claims as these placer claims in 1880 or at any time between June, 1880, and February 27, 1882?

(Objected to as not re-examination, incompetent, irrelevant, and immateriai.)

Ans. Well, I know that in 1880 he was working some men there on his lode claims. He was also working men there in 1882. I couldn't say to my knowledge whether they worked there in 1881 or not.

Redirect 8. Did he do any placer mining work on these placer claims or either of them in 1880 or at any time subsequent to that year to your knowledge?

(Objected to as last above.)

Ans. Not to my knowledge.

Redirect 9. Has any placer mining work been done on the Stinson and Fanchon or either of them since you first knew that ground in 1880, to your knowledge.

(Objected to as last above.)

Ans. I never saw any.

And thereupon, in second cross-examination, witness Stiteler further testified as follows:

2 X 1. Do you know any more about the boundaries and cor-

80 ners of the Stinson and Fanchon placers to-day than you did yesterday.

Ans. I think not.

2 X 2. Who made that Exhibit A you looked at before?

Ans. I don't know.

Re X 3. Do you know whether it is correct?

Ans. I do not.

Re X 4. How near the west line of the Fanchon placer claim was the board you spoke of with Sawyer's name to it?

Ans. I can't tell. I don't remember.

Re X 5. Was it not right on the line?

Ans. I think not.

Re X 6. Will you on your oath say that it was three feet or more beyond and from the west line?

Ans. Well, I could not at present. I don't remember the location exactly.

Re X 7. Do you know where the west line was at that placer exactly?

Ans. I knew what they claimed to be the west line.

Re X 8. How was it marked?

Ans. It was marked by blazed trees and boards.

Re X 9. Now think and give me as near as you can the exact distance of that board you testified about having Sawyer's name on it from this blazed line.

Ans. The distance I couldn't give. The boards were scattered promiscuously around.

Re X 10. What is the difference between a lode claim and a placer claim?

81 Ans. Well, a lode claim *in* quartz carrying mineral, whilst a placer claim is gold in dust or nugget.

Re X 11. Is that the only difference?

Ans. There may be other differences.

Re X 12. In your judgment as a miner does that difference constitute the chief and characteristic difference between mineral claims of lode and placer kind?

Ans. It does partially.

Re X 13. What other difference is there?

Ans. Well, I don't know as I can name them at present.

Re X 14. Has your experience as a miner led you to the condition that this difference between the two kinds of claims under the mining laws of the United States is the correct one?

(Objected to as calling for the witness' conclusion of law.)

Ans. It is correct as far as my judgment goes.

Re X 15. Who were the men who worked in 1880, as you say, on Sawyer's lode claims?

Ans. I don't remember the names of any except Mr. Raymond. I can't tell how many others there were.

Re X 16. Can you tell how many others and who they were worked in any other years you have testified about on Sawyer's lode claims?

Ans. I can't give the names nor the number of men that worked. Mr. Raymond worked for one, I know, in 1882.

Re X 17. At what time in the years was this work done?

82 Ans. In January, February, and March, in 1882.

Re X 18. When was the work done?

Ans. There was some in the Fanchon and Stinson both, in the lode. Some of the lodes were on each of the placers.

Re X 19. This was in January, February, and March, 1882, and Raymond was one of the workers?

Ans. I think so.

Re X 20. You are as sure, are you, about other men working upon what you call Sawyer lode claims within these placers as that Raymond worked on them in January, February, and March, 1882, for Sawyer?

Ans. I am sure men worked there, what time I can't tell.

Re X 21. You didn't know any of the others at all.

Ans. I knew them by sight but not by name.

Re X 22. Have you seen any of those men who worked there for Sawyer within 3 months last past?

Ans. I don't remember as I have.

(S'g'd) DAVID B. STITELER.

Subscribed and sworn to this 20th day of February, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

And thereupon CHARLES CLARY, a witness, of lawful age, produced on the part of the said plaintiffs, being by me first duly cautioned and sworn on oath, testified as follows in response to interrogatories to him propounded by A. W. Brazee, esq., attorney for said plaintiffs:

83 Int. 1. State your name, age, residence, and occupation.

Ans. My name is Charles Clary, age 36, residence Leadville, Colorado, occupation miner.

2. How long have you been a miner, and when?

Ans. I have been mining since March, 1870, in Park, Lake, and Summit Counties, Colorado, and in Salt Lake County, Utah.

3. How much of this time have you been engaged in placer mining, if any, and how much in lode mining?

Ans. About seven seasons in placer mining and the balance of the 13 years in lode mining, except two springs, in assessing Park County, and five months when I was at home East.

4. Do you know Buffalo Gulch, in or near the Sugar Loaf Mountains?

Ans. Yes, sir; by being told the name of the gulch.

5. What, if anything, do you know of the location of the Fanchon and Stinson placer claims?

Ans. I know where they are. I know but very little about the location, the lines, or anything of that kind. I worked there this spring; that is, in June, 1883, but couldn't tell whether on the Stinson or the Fanchon.

6. Do you know where the cabin of James A. Sawyer is at or near the head of Buffalo Gulch, where he lives?

Ans. Yes, sir.

7. About how far below his cabin did you work in June, 1883, and who worked with you, if anyone?

Ans. I should think about quarter of a mile below. Mr. A. J. Kavanagh worked with me; also Mr. C. L. McCracken and a fellow

84 from Indiana. I think his name was Moon.

8. How long did you work there and how many days' work altogether were employed in this work at that time?

Ans. I myself worked there 22 days, Mr. Moore five days, and Mr. Kavanagh about $30 or $40 worth; Mr. McCracken about 10 days or two weeks.

9. State whether you and the others mentioned worked faithfully during this time.

Ans. We all did when we were there. I had to come to town occasionally once a week on horseback about six miles.

10. Who employed you and the others to work then, if any one, and for what purpose?

Ans. Mr. C. L. McCracken, Mr. Lou Rucker. They came to me and asked me to go out there and examine the ground. I went out with them; prospected the ground on a Sunday—the first Sunday in June or last Sunday in the month before. I prospected Buffalo Gulch in one place about a quarter of a mile below Mr. Sawyer's cabin. They asked me if I would be willing to go into a lease with them on the property. I came to the conclusion that Buffalo Gulch would pay if what little water we had held out. We came into town, took out lumber, tools, and provisions and went to work.

11. What was the expense of the lumber and the material, about?

Ans. The whole expense, material and labor, was about $200 or $210.

12. What amount of gold, if any, did you get?

85 Ans. We got between 1½ and 2 ounces, as near as I can judge. I didn't weigh it or see it weighed. It was a poor quality of gold, and I should say was worth about $14 an ounce. There was a great deal of silver with it.

13. Was this work done in the bottom of the gulch or up on the hills?

Ans. In the bottom of the gulch.

14. About how wide a strip did you work?

Ans. About 8 or 9 feet.

15. Was there any gold of any account outside of this strip that you worked?

Ans. It prospected along each side of *of* the pit about the same as it did in the center, and we came to the conclusion to run a cut up the center. I don't think the pay streak extends any distance outside.

16. How long was the pit that you and the others worked?

Ans. About 40 feet. We ran about half that distance before we got on bed-rock.

17. Can you describe anything that there was at this particular point where the work was done or near it by which the place can be identified?

Ans. We commenced one sluice-box in Buffalo Gulch at a stake—I think it a location stake made by Mr. Sawyer—as the Sawyer placer. There is a log cabin partly torn down about 40 feet north of the gulch, on the left-hand side of the gulch coming down. There is a line cut out—looks like a survey line—on the north side of the gulch, and running north as near as I can describe it.

86 18. Was the work that you did up or down the gulch from the stake of the Sawyer placer?

Ans. Up the gulch.

19. Do you know whether the Sawyer placer extended up the gulch from the stake or down the gulch?

Ans. Down the gulch.

20. Then your work was not on the Sawyer placer?

Ans. No, sir.

21. Do you know whether it was on the Fanchon placer; and, if so, what means of knowledge or information on the subject have you?

Ans. Mr. Rucker told me it was on the Iron mine ground.

22. How far above where you worked does the gulch flatten out so as to become a mere depression of the surface.

Ans. I should say two-thirds of the way up to the cabin. It is not a very deep gulch anywhere.

23. Take the gulch where you worked and the results and your observation of the localities, is it of any value as placer-mining ground, and, if of any value, how large a tract or area above the stake of the Sawyer placer mentioned is of any value as placer-mining ground?

(Objected to as irrelevant and immaterial.)

Ans. I believe if they had water on the ground the ground would pay expenses; that is, if this cement held out all the way up. I should say to the head of the gulch. We worked it in width 8 or 9 feet up and down the gulch. I should think a strip that width and a quarter of a mile in length would pay.

87 24. With the source of supply of water which you observed in the gulch, would that strip pay to work?

Ans. No, sir.

25. Is there any other source of supply for water in that gulch, or which could be brought into that gulch at any expense which would make the placer mining there profitable, in your opinion?

(Objected to as incompetent, irrelevant, and immaterial.)

Ans. Not from that point. It would be from the bottom of the gulch; that is, three-quarters of a mile below the Sawyer stake, but above the Sawyer stake it would not be profitable.

26. At the point where you worked was there any evidence of placer mining having been done there, or at any point above there, going up Buffalo Gulch and the sag at the head of it?

Ans. Very little. There was an old box that laid there, looked as if it had been used years ago, and one short box about five feet long that looked as if it had been made lately. But there was no mining done that I could see, only a prospect hole which I suppose a man would dig in an hour at the most.

And thereupon, on cross-examination, said witness CLARY further testified as follows in reference to interrogatories to him propounded by J. F. Frueaff, esq., attorney for said defendants:

X 1. Had you ever been on these premises before last summer;
88 and, if so, when; that is, on the lower part of the Stinson and Fanchon placers?

Ans. In 1873 I was in the lower portion of them. I was not in the top of the hill.

X 2. Did you then see any indications of placer mining having been done on any part of them.

Ans. No, sir.

X 3. Would the quarter of a mile up from where you worked and testified that you believed it would pay, extend on these premises, pointed out to you as being the Fanchon and Stinson placers.

Ans. From what I have been told I think it would. I was told by Mr. Lou Rucker on the ground. I don't know on which of the two placers it would extend.

X 4. In your opinion are those premises on which you worked, and pointed out to you as the ground of the Iron Mining Company, and about which you have testified in chief, placer mining ground.

Ans. I don't think all of it is. I am certain it is not from observation.

X 5. Do you know where the lines of those placers are?

Ans. Yes, Mr. Rucker told me where our line was. That is all I know of the lines.

X 6. How then can you say that other ground is not placer ground of these premises, which you don't know whether it is within their boundaries or not.

Ans. Mr. Rucker told me that that was Iron mine ground when I worked. He pointed up the gulch as far as Mr. Sawyer's blacksmith shop, and on each side of the gulch indefinitely.

X 7. How much of the ground within these indefinite boundaries do you give it as your opinion is not placer ground.

89 Ans. I should say more than half. I cannot give it in acres.

X 8. What do you know of the feasibility of bringing water by a long ditch on to these premises and working these placers of the Iron Mining Company.

Ans. I don't think it would be feasible to bring a ditch in there without there were more gulches on the placer.

X 9. State what propositions have been made to you for this purpose. (Objected to as calling for mere hearsay.)

Ans. Mr. George Kroeger told me that if I thought the ground would pay and could get a ditch in there that didn't cost over $6,000 and would get a lease from the Iron mine for three years, he would put a ditch in there or get one put in.

X 10. Did you try to get any such lease, and did you succeed. (Objected to as calling for hearsay.)

Ans. Yes, sir; I tried but did not get it. Mr. McCracken went to Mr. Arens and Mr. Arens told him from what he tells me that he would have to wait until the directors of the Iron mine met, and it could be laid before them.

(S'g'd) CHAS. CLARY.

Subscribed and sworn to this 21st day of February, A. D. 1884. Before me,

(S'g'd) ROBERT H. BUCK, *Examiner.*

Adjourned at 2 o'clock p. m.

90 2 o'clock p. m., resumed.

And thereupon AUSTIN J. KAVANAGH, a witness of lawful age, produced on the part of the plaintiff, being by me first duly cautioned and sworn, on oath testified as follows in response to interrogatories to him propounded by A. W. Brazee, esq., attorney for said plaintiff.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Austin J. Kavanagh; age, 39; residence, Carbonate Hill, Leadville; occupation, miner.

2. How long have you been a miner, and where?

Ans. I have mined on and off since 1876, in Colorado.

3. How much of this time have you been engaged in placer mining and how much in lode mining?

Ans. I have been engaged in placer mining altogether probably between two and three months and in lode mining over three years.

4. Do you know Buffalo Gulch, in or near the Sugar Loaf Mountain, so called?

Ans. I do.

5. What, if anything, do you know of the location of the Stinson and Fanchon placer claims?

Ans. I worked on the placer mine they call the Fanchon. There was another down below us that I didn't know the name of. They used to call it Mr. Sawyer's placer.

6. Do you know where the cabin of James A. Sawyer is, near the head of Buffalo Gulch, where he lives?

Ans. I do.

91 7. Do you know Charles Clary, the witness who testified this forenoon here? If so, state whether the work you did on the Fanchon was in company with him.

Ans. I do know him and worked with him in that claim.

8. About how far below the Sawyer cabin did you commence work, as near as you can judge?

Ans. About a quarter of a mile below his cabin.

9. State whether you and the other men who worked there at that time worked faithfully?

Ans. I believe we did.

10. Who employed you to work there?

Ans. Charles Clary.

11. About what was the whole expense for material and labor expended in doing this work by you, Clary, and the others?

Ans. I don't know; only what I have heard them say.

12. What amount of gold was obtained as the result of the expenditure of this labor and material?

Ans. I should think about 1½ or 2 ounces, as near as I can guess at it. I never saw it weighed.

13. About how wide a strip was worked out in the bottom of this gulch by you, Clary, and others, in 1883, and how long?

Ans. About 8 or 9 feet wide and about 30 or 40 feet long; I never measured it.

14. Did you prospect the banks outside of the strip?

Ans. I did not.

92 15. Can you describe anything at the point where the work was done and the cut made by which the place can be identified? If so, state the same fully.

Ans. Yes, sir; there is a log cabin about 30 or 40 feet on the right of it going up the hill. Also, there is boxes there that we used, if they have not been removed. Also, a stake of the Sawyer placer. There was one stake there when we commenced work what was the boundary of what we call the placer, but I don't know whether the boundary of the Sawyer or the Fanchon.

16. Was the cut made by you, Clary, and others, above or below this stake?

Ans. Our work was all above this stake.

17. Was there evidence of any work done at the place you cut this cut at the time you commenced, or at any point above there, before you commenced work with Clary and others. If so, describe such evidences of former work in placer mining, and when the same appeared to have been done, and the extent of such former work.

Ans. When I went out there Mr. Clary had been out there two days before. There were two sluice boxes made when I went out there. They were new. One was a small box about 5 feet long, the other was about 10 feet long. I also found very near the stake, when we commenced in that placer, an old sluice box that had been used there at some time. It was very old and rotten; it must have been years ago. There was no work done only what they had done two days before, that I know of.

And thereupon, on cross-examination, the said witness KAVANAGH further testified as follows:

93 X 1. Would you call the ground of the Fanchon placer at and about where you were working, placer ground?

Ans. Yes, sir.

X 2. Did it show colors of gold wherever you worked in or saw it worked?

Ans. In all the work we did there we found gold, both in dust and nuggets.

X 3. Did you see any lodes, ledges, or veins of mineral on the Fanchon or Stinson placers?

Ans. No, sir; I saw a few holes with water in them. I didn't go round any. Saw some tunnels, but was never in them.

And thereupon, on redirect examination, said witness KAVANAGH further testified as follows in response to interrogatories to him propounded by A. W. Brazee, esq., solicitor for said complainant.

Redirect 1. From your observation and experience in working this ground, and of the supply of water, what do you say about that ground being capable of profitable working as placer ground.

(Objected to as not re-examination, incompetent, immaterial, and no qualification as an expert shown.)

Ans. I don't think that with the present supply of water there it could be worked profitably.

(S'g'd)

AUSTIN J. KAVANAGH.

Subscribed and sworn to this 21st day of February, A. D. 1884.
Before me—

ROBERT H. BUCK, *Examiner*.

94 And thereupon, ALBERT M. PENNOCK, a witness of lawful age, produced on the part of the plaintiffs, being by me duly cautioned and sworn on oath, testified as follows in response to interrogatories to him propounded by A. W. Brazee, attorney for said plaintiff:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Albert M. Pennock; age, 26 years; residence, Soda Springs, Lake County, Colorado; occupation, miner.

2. How long have you been engaged in mining, and in what branch of mining principally?

Ans. I think it is three years and six or eight months; in fissure veins.

5. Do you know the location of the Fanchon placer claim, so called?

Ans. I know it by what people say it is called.

4. Do you know where it is?

Ans. I do, from information; that is, what people say.

5. Do you know where Mr. James A. Sawyer's cabin is—where he lives?

Ans. I do.

6. What discoveries, if any, of a lode or lead bearing gold or silver or other precious metals in rock in place have you made or know of being made on the so-called Fanchon placer, if any? Describe the walls, vein matter, and precious metals thereon or ores, and where the same is located with reference to the Sawyer cabin, where James A. Sawyer lives, and the distance therefrom.

(Objected to unless the time of discovery is shown to have been prior to the location and entry of the Fanchon placer patent.)

95 Ans. I discovered what I called a lead a little west and north of Sawyer's cabin. I think my side line would very nigh reach Mr.

Sawyer's cabin. It is surveyed north and south, about 10° west of north. I never got but one wall, the foot wall. I call it a granite wall. The vein matter is brown quartz. I think the first assay I got, before I got down onto it, was 10 ounces silver. I think there was another assay made when I quit work. I think that was about 3 or 4 ounces silver.

7. When was this discovery made?

Ans. I think it was made in December, 1882.

8. Do you remember of hearing a conversation about December, 1882, near this cabin, between James A. Sawyer and Robert Berry, relating to an arrangement between Mr. Sawyer and William H. Stevens, and how Mr. Sawyer was led to enter the placers in question? If so, state the same fully.

(Objected to as leading, immaterial, irrelevant, incompetent.)

Ans. I can't say.

And thereupon, on cross-examination, said witness, Pennock, testified as follows:

X 1. What was the first fissure vein you entered upon 3 years ago and where?

Ans. On the Florence mine, up Frying Pan Gulch; also in Half Moon Gulch.

X 2. When did you first go into Buffalo Gulch?

Ans. I think in December, 1882.

96 X 3. What was the name of this claim you discovered there?

Ans. I named it Iron Duke

X 4. Were you the discoverer and locator?

Ans. I was.

X 5. How deep a shaft did you sink in it at that time?

Ans. I think a little over 12 feet.

X 6. Have you ever sunk it any deeper since then?

Ans. No, sir; I have not.

X 7. How deep in that shaft did you find the vein?

Ans. I think I caught the foot wall, or what I call the foot wall, at 9 or 10 feet.

X 8. How thick was the vein?

Ans. I couldn't say positively. I kind of thought I was just coming into the hanging wall.

X 9. What was on top of it, in sinking the shaft down from the surface?

Ans. I found a quartz flow from the surface all the way down.

X 10. In which direction did the vein dip?

Ans. To the west; ascending to my judgment.

X 11. At what depth in the shaft had you passed through the vein and struck the foot wall?

Ans. I think 9 or 10 feet that I caught the foot wall.

X 12. Was the whole western side of the shaft, until what you call the foot wall was struck at about 9 feet, vein matter.

Ans. I first struck the vein at the depth of 9 or 10 feet, when I struck the foot wall.

97 X 13. Was the foot wall on top of the vein?

Ans. No, sir.

X 14. When you struck the foot wall you were at the bottom of the vein, were you not?

Ans. I was at the side of the vein. I call it at the bottom of the vein and the side of it too.

X 15. What was the nature of this foot wall?

Ans. I call it granite.

X 16. At what angle did the vein pitch?

Ans. I should say 30° to 35°; I can't say exactly.

X 17. Was the shaft sunk perpendicularly and timbered?

Ans. It was sunk perpendicularly, and the lower part only was timbered, I think, to within two or three feet of the top.

X 18. When did you post your discovery stake?

Ans. When I got my lead; I think in December, 1882, or January, 1883.

X 19. You said you were in mineral from the time you commenced sinking until you struck the foot wall, at depth of 9 or 10 feet in the shaft. At what depth of that distance did you decide that you had a vein?

Ans. As quick as I struck the foot wall.

X 20. In your shaft had you the vein at a depth below the finding of the foot wall; and, if so, where?

Ans. After I struck the foot wall I considered I had the vein in the bottom of the shaft.

X 21. Was the bottom of the shaft covered, or if not altogether, how much of it was there in vein matter?

98 Ans. I considered I had vein matter the width of the shaft in the bottom.

X 22. Did you take from this shaft yourself the last matter spoken of assayed by Simmons when you quit work?

Ans. I took the stuff out that I considered was assayed from about 11 or 12 feet deep.

X 23. Did you take it to Simmons yourself?

Ans. I can't say whether I gave it to Mr. Simmons or Mr. Barbour.

X 24. Did you get the certificate of assay from Simmons?

Ans. No, sir; because I never got certificate. They told me; either Barbour, who ran the mill, or Simmons, the assayer, told me.

X 25. The assays you received, both, only indicated silver and no gold, did they?

Ans. They told me they ran in silver; don't think they told me anything of gold.

X 26. At the time you went upon these premises and located this claim, you knew, did you not, that it was claimed to be on a placer patent?

Ans. At the time I went on there it was claimed not to be patented.

X. 27 Who told you it was not patented?

Ans. I think Mr. Berry claimed it was not patented at the time.

X 28. Hadn't you heard from Mr. Sawyer before you went there that it was patented?

Ans. No, sir; I had not.

X 29. Was Mr. Sawyer living in the cabin at the time you went there?

Ans. No, sir.

99 X 30. When did you first make Mr. Sawyer's acquaintance?

Ans. I can't say positively; I think it was the last of December, 1882, or first of January, 1883.

X 31. When you first went there?

Ans. No, sir.

X 32. How long after you first went there, and where did you first make his acquaintance?

Ans. I couldn't say; it might have been a week after.

X 33. Had you made your discovery at the depth you indicate within a week after you commenced working them?

Ans. No, sir; I had not.

X 34. Then you met him and knew from him that this was patented ground after you commenced digging, but before you made a discovery of mineral, did you?

Ans. I met him over there one day and he told me if I would go on and prospect he would give a third interest or a half interest if it took very much labor to find a lead.

X 35. Was that in November, before you commenced work on this shaft?

Ans. Yes, sir.

X 36. Then, as a matter of fact, before you commenced work in this shaft on which you located this claim, you had heard from Mr. Sawyer that this ground was claimed by him or others as patented ground?

(Objected to as argumentative and assuming things not shown, and the conclusion of the argument is not a deduction from the premises.)

100 Ans. He told me he claimed some ground in there; that's all I know.

X 37. Did he claim that this ground in which you sunk this shaft belonged to himself and others, and if so, by what right?

Ans. He claimed some ground in there belonged to himself. I don't know as he gave me any particulars of his right.

X 38. When and where did you have the conversation with Berry before you commenced work there?

Ans. I can't say.

X 39. Was it before you had the conversation with Sawyer?

Ans. I can't say that.

X 40. Then you don't know whether Berry first told you it was not patented ground or Sawyer that he claimed it, do you?

Ans. I can't say.

X 41. How often have you talked with Mr. Berry since that first conversation about these premises being patented or not and this litigation?

Ans. I can't say.

X 42. Frequently?

Ans. He might have talked to me once, twice, or three times about it.

X 43. Might he have talked to you a dozen times?

Ans. Don't think he has.

(S'g'd) ALBERT M. PENNOCK.

Subscribed and sworn to this 21st day of February, A. D. 1884 before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

And thereupon JOHN F. LEWIS, a witness of lawful age, produced on the part of the plaintiff, being by me first duly cautioned and sworn,
101 on oath testified as follows in response to interrogatories to him propounded by A. W. Brazee, esq., attorney for said plaintiff:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is John F. Lewis; age, 40; residence, Soda Springs, Lake County, Colorado; occupation, teamster.

2. Do you know the Fanchon or Stinson placers, or about where they are located near the head of Buffalo Gulch?

Ans. I know what is called the placer, or one of them. I don't know the names.

3. Describe where it is as near as you can and the locality around it.

Ans. I think it lays west and north of what is called Sugar Loaf Mountain, in Lake Park Slope, as they call it.

4. Do you know Buffalo Gulch, and how long have you known it?

Ans. I know what they call Buffalo Gulch for three years this winter.

5. Did you draw any wood or timber from the country at and about the head of Buffalo Gulch and the hillside on the north and south sides of that gulch; if so, what, for whom, and when did you draw the same and to what place?

(Objected to as irrelevant, immaterial, and incompetent, because not connected with the premises concerning which the suit is pending.)

Ans. I hauled mining timbers, mostly from the head of Buffalo Gulch. They were skidded in the woods, transferred over the hill to the
102 head of Buffalo Gulch. There I loaded them and hauled them to the iron mine. I suppose they were for the iron mine. I hauled some in December, 1880 or 1881, and in January, February following.

6. Who paid you for this service?

Ans. Mr. Crowther, I think, was the surface boss of the Iron Mine. He gave me an order to the office of the Iron Mine. They gave me a check on the Bank of Leadville.

7. Were any others, and, if so, how many, engaged in drawing timbers from the same locality at the time you were so employed?

Ans. When I first commenced I think there were five teams, and two of their own—seven in all—engaged in hauling off and on, and before I got through I guess there were as high as 14 teams.

8. State, if you can, definitely, whether you commenced hauling in December, 1880, or December, 1881?

Ans. It was three years ago last December; in 1880.

9. Do you know where Mr. Sawyer's cabin is that he lives in now, at or near the head of Buffalo Gulch?

Ans. I do.

10. How near to that, or to the place where that cabin stands, did you load the mining timbers delivered by you to the Iron Mine referred to?

Ans. I can't say exactly; should think about 600 or 800 feet, more or less.

11. Which way?

Ans. I should judge a little north of east, or east.

12. Have you at any time heard Mr. Sawyer state anything upon
103 the subject of how he came to locate the Fanchon and Stinson placers, or any arrangement between him and William H. Stevens

and Leiter about such location, what Sawyer was to do and what Stevens and Leiter were to do? If anything, state the same fully and at large, according to your best recollection.

(Objected to as incompetent, irrelevant, and immaterial.)

Ans. When I was hauling these timbers I was going out one morning after a load, overtook Mr. Sawyer; think he had been to Leadville. He got on to ride with me. He told me something in regard to this patent. I don't remember all he told me. He told me he had been there quite a while; I don't know exactly how long; had spent all his money prospecting; that Mr. Leiter was an old acquaintance of his, and he thought he could go over and see what he could do with him in regard to prospecting. He met Mr. Leiter in his office or about the Iron Mine, and had a little talk with him about his property; also he spoke about there being good timber over there, or Mr. Leiter asked him about timber. Mr. Leiter told him that probably he might do something for him to help him; to wait and see Mr. Stevens, who was more used to doing that kind of business, or something to that effect. Mr. Stevens came in and had a little talk in regard to the country over there. Mr. Stevens, I believe, made arrangements to go out in a few days and look at it. I don't remember then what else he told me. And then he told me that he had made arrange-
ments that he was to enter the placer or placers—I don't remem-
104 ber now—and Stevens was to develop his property. I don't remember whether they were to deed him the whole or half. They were to pay all expenses. I think he told me the ground was entered in his name. I believe that's all.

And thereupon on cross-examination said witness LEWIS further testified as follows:

X 1. Do you remember the whole conversation you had with Mr. Sawyer?

Ans. I do not. He did most of the talking.

X 2. Are you sure that what you have narrated of that conversation is in every detail as given by you perfectly correct?

Ans. Pretty certain; yes, sir, the sum and substance of it.

X 3. When did you first tell Mr. Berry about this?

Ans. About half an hour or three-quarters ago.

X 4. Who spoke to you first about testifying in this case and gave your name to Mr. Berry as a witness?

Ans. I can't say that any one did; I don't know who gave my name as a witness.

X 5. Did you talk with Mr. Stiteler about this matter previously?

Ans. Probably I have. I can't say for certain.

X 6. In your judgment, from your acquaintance with the various witnesses and parties interested, through whose instrumentality did you come to be subpœnaed?

(Objected to as calling for the witnesses guess.)

Ans. I have no idea.

(S'g'd) JOHN F. LEWIS.

105 Subscribed and sworn to this 21st day of February, A. D. 1884 before me.

ROBERT H. BUCK,
Examiner.

And thereupon LEWIS PORTMAN, a witness of lawful age, produced on the part of the plaintiff, being by me first duly cautioned and sworn, on oath testified as follows in response to interrogatories to him propounded by A. W. BRAZEE, esq., attorney for said plaintiff:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Lewis Portman; age, 25; residence, Soda Springs, Colorado; occupation, prospecter and miner.

2. How long have you been engaged in the business of mining, in what branch, and where?

Ans. For the last four years. I was prospecting round Silver Cliff in 1879, and worked round the Columbia mine in Boulder County also in 1879, and have been around Sugar Loaf, at the head of Frying Pan, since February, 1880; my experience has been in lode and ledge mining.

3. What discovery of mineral in vein or lode in rock in place carrying silver or gold or ores thereof have you made on the Fanchon or Stinson placer claims about the head of Buffalo Gulch? If any, state where such discovery was made, the nature of the wall-rock and vein material, the character of the ore, fully.

Ans. I discovered a vein about the middle of November of 1882, on the southwest corner of the Fanchon. The vein cropped within a few feet of the surface; a well-defined vein with a smooth foot-wall of
105½ granite. Have not seen the hanging-wall yet. The vein is quartz gauge and gangue. The quartz ran about from 18 to 64 ounces in silver. The ore also contained zinc and sulphurets. I couldn't say how wide the vein is, not having seen the hanging-wall, but should judge, from the way the vein is in the south side of it it was 4 to 8 feet in width.

4. What is the name of this discovery of yours?

Ans. Amazon.

5. How long have you been familiar with the country around the head of Buffalo Gulch and to the west of it, and both sides of it, particularly the north side, and from the head of the gulch down the gulch eastwardly?

Ans. I have been acquainted with the country from Mr. Sawyer's cabin west since about March, 1880, but eastwardly I couldn't say, as I have only been up and down the gulch and don't know anything about it.

5. State what surface indications of lodes you have observed on the ground of the Fanchon or Stinson placer claim, either or both, and how extensive and continuous to a person passing over that ground, when you first knew it, such indications, if any, were.

(Objected as leading and incompetent, as the witness has not shown any qualification as an expert.)

Ans. I am not acquainted with the Stinson placer, but have been over the Fanchon and have seen float and blossom rock scattered all over.

7. What indications of placer working were there on the Fan-
105¾ chon ground in 1880? If any, describe the same and where they were.

Ans. I didn't examine Buffalo Gulch very close. Have been up and down and hav'n't seen any on the Fanchon ground.

8. In going up and down the gulch at that time how far did you travel below Sawyer's cabin, and how near the road was the bottom of the gulch for, say, half a mile below Sawyer's cabin?

Ans. I couldn't say, as I was not very well acquainted with the gulch in 1880. Have been up and down it, but have never prospected there. I have been all the way down the gulch to Lake Park Creek.

9. What is the name of the stream flowing through Buffalo Gulch, and when does it connect, if at all, with Lake Park Creek?

(Objected to as wholly immaterial and irrelevant.)

Ans. I don't know its name. I couldn't say exactly how far, but it connects with Lake Park Creek below the mouth of Buffalo Gulch.

10. If there had ever been any considerable placer mining down within a quarter of a mile of the cabin where Sawyer lives or anywhere on the Fanchon placer before 1883, would you have been likely to have discovered it?

(Objected to as incompetent, irrelevant. The chances of the witness' discovery are not subject matter of discovery.)

Ans. I think I should.

Adjourned to 22d February, at 9.30 a. m.

FEBRUARY 22, 1884—9.30 a. m.

Resumed.

106 11. State the names, if any you know, of lode mining claims on the Fanchon or Stinson placer claims in whole or in part, what you know in respect to the same, and the character of their ores respectively.

(Objected to unless the question be limited to veins or lodes actually existing and found, and not generally extended to alleged "claims.")

Ans. Commencing at the east, the first claim of any importance is the Dinero. The character of the Dinero on a sulphuret, carrying silver. It runs on to the Fanchon not much I think, I think from one hundred to 300 feet. The next claim is the Orinoco. The character of its ore is sulpheret carrying silver. It runs on the Fanchon about 300 feet. The next claim is the Gunnison. The character of its ore is sulpheret, also a good deal of native silver. It runs on to the Fanchon placer somewhere from 100 to 250 feet. The next mine of any note above the Gunnison is the Birdie R. The character of its ore is sulpheret, carrying silver. From the best judgment I can form from seeing the stakes, I should say it ran on to the Fanchon 200 to 400 feet. There are several prospects running on the Fanchon, but I don't know much about them. The next ore is the Michigan Boy. It is patented, and what they ran onto the placer is cut out.

(Defendant objects to any statements as to claims not on or included in the patents attached to the suit, or as to the workings of any mining claims, such workings not being on the placers.)

107 The Michigan Boy ore is a kind of sulpheret and chloride, carrying silver. The next claim above that is the Mountain Boy. I have seen the ore from that, but couldn't say the character of it. It is quartz. This runs on to the Fanchon about from 150 to 300 feet. Then there is the Pen Yan. The old survey runs on to the Fanchon, but I couldn't say that the new survey does. The old survey ran on to it, I think, about 200 to 400 feet. I stepped it off, but forgot now how much it was. The next claim is the Amazon. The character of its ore is sulphuret and quartz. It runs into the placer from 1,000 to 1,200 feet in length. The full width at the southwest corner is not on the placer. Then north of the Amozon is the Advance. I don't know how much of

that is in, but think most of it is, if not all. Then north of the Dinero is the Horseshoe. I couldn't say the character of its ore. I have not seen it since they did the last work on it. There are several other claims on it, but I don't remember the names. One of them is 1,000 to 1,500 east of the west line. Then there is the Marie Louise, about that distance or a little more east of the west line. The others I couldn't say anything about, as I only passed by.

12. Mention the names, if any you know, of lodes, leads, tunnels, which have been or are being worked by James A. Sawyer, or under his direction, on the placer claims mentioned, or either of them, in whole or in part, and what you know, if anything, of the character of ores produced therefrom, or from veins worked by him?

Ans. I have been to several of the holes, but couldn't give their names, except the Undine. I couldn't tell which is the Undine, as he
108 moved the stakes. There is a shaft north of the Orinoco, on the same lode. I think it was sunk in the winter of 1882 and 1883. From the look of the ore I should judge it to be tolerably fair, but nothing good. There is a tunnel, a cut he had run, as he claimed, on the Dinero claim. I was in that. It was in gauge and some quartz in it. I was also in a tunnel he ran to cut the Orinoco lode, and the Gunnison above it. The time I was in it I didn't see anything but granite in it, country rock. I have also seen some of his other holes that he was digging, but I didn't give much attention to them, as I didn't think there was anything there. One claim he located, I think, in 1879, called the Lizzie Bell. I saw he had lode matter there and quartz. Don't think it has been washed for several years, from the look of it.

13. Do you know of any other matter or thing which can tend to the benefit or advantage of the plaintiff? If so, state the same at large, as fully and particularly as if interrogated thereto.

Ans. No, sir; I don't think of anythign just now.

And thereupon, on cross-examination, said witness PUTNAM further testified as follows:

X 1. I believe you said the first time you went to Buffalo Gulch was in March, 1880; how did you go there then, in what capacity, and what doing?

Ans. The first time I went that way I was on my way to town from my cabin west of there on the hill at the head of Frying Pan Gulch. I crossed over on snow shoes to the road.

109 X 2. Did you examine any of the surface or any mining operation on the premises of these two placers at that time?

Ans. No, sir; I couldn't see the surface at that time; there was too much snow.

X 3. When were you next over these placers?

Ans. I couldn't say for certain, but I was over them almost every week in 1880, after that.

X 4. What veins or lodes did you see on either of these placers in 1880?

Ans. I saw a ledge on the Advance Lode in 1880; it was solid quartz, cropped to the surface.

X 5. What work was done on it in 1880, and by whom?

Ans. I couldn't say; but what was done was done by the Stiteler Brothers.

X 6. Was there a shaft sunk?

Ans. There was a hole dug; a kind of cut, about five feet deep when I saw it; there was a shaft sunk farther north on the same ledge, but not on the same claim; it was a quartz ledge; I wouldn't call it a lode; it was at that time about 25 feet deep.

X 7. When did you first see the hole on the Advance?

Ans. In the summer of 1880, I think.

X 8. How often then did you see the workings on the Advance claim until you saw it the last time?

Ans. I couldn't say how often I have seen it.

110 X 9. How often have you been in any of the workings?

Ans. Altogether, I should judge 4 to 10 times.

X 10. When was the last time you were on them?

Ans. Sometime last spring.

X 11. How deep were they then?

Ans. The tunnel was in something over 60 feet. The shaft at that time was about 20 feet deep.

X 12. Did you see in the tunnel any vein of mineral-bearing matter in rock in place?

Ans. I saw what I would call a feeder; think it would carry some silver, but I wouldn't call it a regular vein.

X 13. Whereabouts in the tunnel did you see this?

Ans. I think it must have been about 10 or 15 feet from the face.

X 14. Did it then extend to the end of the tunnel?

Ans. I don't know whether it did or not. I didn't examine it.

X 15. Did you see any vein of mineral-bearing matter in rock in place in either of these two holes in the Advance? And, if so, describe it, and state when you saw it.

Ans. In the shaft west of the tunnel I saw a well-defined vein carrying mineral. I think the top of the shaft was timbered. I just examined the bottom of the shaft. The first time I saw that shaft was in 1883.

X 16. What was the vein, how thick was it, and what were the hanging walls?

111 Ans. I should judge it to be 3 to 5 feet from the foot of what they called the hanging wall. The foot wall was granite. The hanging had gouge on it. I couldn't say I saw the hanging wall.

X 17. Did you in 1880 see any other veins on the premises of the Fanchon or Stinson placers?

Ans. I saw vein matter, but couldn't say it was in place. A partner of mine dug a hole in 1880, in the summer, I think. Mr. Sawyer told him to get off and said the ground was entered.

X 18. How deep was the hole?

Ans. I should judge 4 to 6 feet.

X 19. From that time on you have known that this ground of the Stinson and Fanchon placers was claimed to be entered, have you not?

Ans. I couldn't say that I did as he had claimed ground for half a mile west of the Fanchon, and I think he only claimed it for the timber. I didn't pay any attention to whether it was entered or not. I didn't think it was, though.

X 20. Did you find or see any other veins in 1880 than these two you have spoken of?

Ans. I couldn't say positively that I did in 1880. I saw the Lizzie Bell, but couldn't say whether that was in 1880 or 1881.

X 21. Was the Lizzie Bell the next one you saw on those premises?

Ans. I think it was, but am not positive.

X 22. Where is it located?

Ans. It is located north of where Mr. Sawyer lived in the cabin a year ago. It runs west, though. He didn't survey with the vein.

112 X 23. What work was done on it when you first saw it?

Ans. I couldn't say positively as I was not in the hole. It was about 10 to 15 feet deep, I should judge.

X 24. Where in the hole did you see any vein?

Ans. I couldn't say that I saw it exactly in the hole, but I saw it on the dump. I didn't think they carried it then.

X 25. Did you see any walls in the hole?

Ans. I did not.

X 26. Could not the vein matter you say you saw on the dump have all been taken out of float vein matter without there being any vein there at all?

Ans. No, sir; it could not. The gouge and quartz looked as if it came out of a well-defined vein.

X 27. What are the characteristics that show whether gouge and quartz comes from float or from a well-defined vein?

Ans. Where that shaft was sunk the ground was too level for there to be much float away from the vein. On the surface the vein is generally broken up, that is in that camp, but if a person sinks down on the float the vein will become well defined in a little distance. The flow is hardly ever very far from the vein, that is, the underground flow with a little wash 6 inches to a foot in some places on top of the flow.

X 28. When were you next in the Lizzie Bell?

Ans. I have never said I have been in the shaft yet.

X 29. Do you know whether there has ever been any more work done on it than was when you saw it from the top?

113 Ans. I don't know whether there was or not. I have never been close to it; have passed by it but not examined it.

X 30. When did you locate the Amazon lode?

Ans. I think in November, 1882.

X 31. Who were the locators?

Ans. Fred Eisenmenger, a partner of mine, and myself. He had one-third; I had two-thirds.

X 32. How is it owned now?

Ans. He owns 1–3, I own 2–3.

X 33. Where is he?

Ans. Soda Springs.

X 34. Does nobody else but you two own any interest either by legal title or by your word of promise to make title at some future time in the same?

Ans. There is another party, Joe Bloss. He has no interest yet. He is to do so much work for a fourth interest, and get us a clear title to it. One south end line is not on the placer, but conflicts with another party.

X 35. Is this Mr. Bloss the gentleman at whose house Mr. Berry, the United States Government inspector who is pushing this case, is and has been living for some time?

Ans. Yes, sir; he is the one. I have known him since 1880.

X 36. Was he or his wife out there with Mr. Berry upon several different occasions and within a month past, consulting with you and others about the testimony in this case?

Ans. I have never seen him and Mr. Berry out there together, that is, to come from town together. Have not seen Mr. Berry since last fall until day before yesterday. I haven't seen Mr. Bloss since last fall.

114 X 37. Have you not consulted with those two together, either out there, in town, or anywhere about this case and the facts in it?

Ans. I never have when they were together—never said anything about it at all.

X 38. When did you make the bargain with Mr. Bloss to get you a clear title to your claim in consideration of the fourth interest you were to deed him?

(Objected to as irrelevant and immaterial.)

Ans. In December, 1882.

X 39. When did you first commence the work and diggings which led to your subsequent location of the Amazon lode?

Ans. I think it was from 300 to 500 feet from what I would call the southwest corner of the Fanchon Placer.

X 40. Did you not, before you dug them, make several cuts between the Sheilds vein and this spot trying to find its continuation up towards this place?

Ans. I did not.

X 41. Did you or your co-locator sink any holes, make any cuts, at any place between the Shields mine and the spot you have stated as the placer when you did the first work on the Amazon?

Ans. No, sir; that was the first work, that on that corner.

X 42. When did you first commence the work there?

Ans. November, 1882, after the 15th. It was located the 16th, I think.

X 43. Did you not cross at south of your shaft before you commenced sinking your shaft?

Ans. No, sir.

115 X 44. When did you first find mineral on the Amazon?

Ans. In November, 1882.

X 45. How deep down were you at the time in the shaft?

Ans. I found the flow within a foot of the surface.

X 46. How deep into the shaft did the flow extend?

Ans. It extended down till the vein got into place, I should say 4 or 5 feet.

X 47. How much deeper then did you sink on it being in place?

Ans. I should judge it was 35 to 40 feet deep to the bottom of the shaft; that is, in the incline.

X 48. What walls have you disclosed in it surrounding the vein?

Ans. A foot wall of granite.

X 49. Is it plainly disclosed?

Ans. Yes, sir; I should judge it one of the best walls in the camp. Not a break in it.

X 50. What is the other wall?

Ans. Haven't seen the hanging wall.

X 51. Is this discovery shaft within the boundaries of the Fanchon Placer?

Ans. Yes, sir.

X 52. How do you know it?

Ans. I didn't know it when I sank it, but I know it now. I saw two blazed trees there, Fanchon Placer, and a pile of rock where the stake was which I took to be the corner.

X 53. Did you ever see the stake in the pile of rock?

Ans. Can't say I did.

116 X 54. How do you know it was there?

Ans. I think Joe Bloss pointed it out to me and said he had seen a stake there when they were surveying.

X 55. Did you not yourself remove that stake?

Ans. I did not.

X 56. You spoke of the Dinero, the Orinoco, the Gunnison, and the Birdie R. as being lode claims situated on the placer. Are not all the workings ever done in any of the four on the other side of the crest of Sugar Loaf Mountain, and off of either of these placers?

Ans. The Dinero is at what I should call at the top of the crest. All the others are on the south side, very near the top; that is, the workings. The crest of the mountain is between the workings of these last three and the placer. There is not much of a crest there. The placers are on the north side of the crest, in the heavy timber.

X 57. Is there not a large blow-out of rough hard rocks between the workings of these four claims and the line of the placer in that direction?

Ans. There is a ledge of fine-grained quartz, running east and west between the workings and the placer. The veins cross it, though.

X 58. Have any workings been done on these four mentioned claims on the other side of that ridge; and if so, on which, and where?

Ans. I am not positive about the Dinero, but think the last shaft sunk by them is north of this ledge. Also that the Orinico has one shaft north and one south of the blow-out.

117 X 59. Have you been around the lines of the Dinero?

Ans. No, sir.

X 60. Do you know its corners?

Ans. All I know of its corners is what was pointed out to me from the main shaft; I should judge it ran onto the placer something over 150 feet any way.

X 61. How far was that main shaft from the placer line?

Ans. I should judge between 600 and 800 feet.

X 62. What workings did you see or examine between the main shaft and the placer line on the Dinero?

Ans. There was a cut ran in on the ground to cut the vein. Couldn't say how long it is. I went into it and saw the vein and saw them taking out surpheret ore.

X 63. How far did this cut extend from the main shaft towards the placer?

Ans. I should judge about half way, hardly; must have been 300 to 500 feet from the main shaft.

X 64. When were you there?

Ans. I think last spring, 1883, was the last time I was there.

X 65. Now, don't you know that they followed that vein till they came to the points in the direction of the Fanchon, and that the vein stopped?

Ans. I do not.

X 66. Have any other shafts been sunk on the Dinero between the main one that you went into and the north end of the Dinero which, you say, laps on the Fanchon?

Ans. Not that I know of.

X 67. Have you seen the lines and corners of the Orinoco?

118 Ans. I saw one corner, the northeast corner; that's all.

X 68. What workings are there on the Orinoco that you have seen?

Ans. There is one shaft, I think, sunk about 50 feet. Where I saw it it was 25 feet deep; that was when I was down in it in the spring of 1883. The other shaft was about 15 or 20 feet deep. I was not in it, but could see the vein from the surface; they were working on it, taking out mineral; that was last summer, 1883, I think. These are all the workings on the Orinoco that I know of.

X 69. What is the distance, respectively, of these from the Fanchon line?

Ans. What they used to call the Fanchon line before the resurvey made by Mr. Hall for the Orinoco boys was, I should judge, about 50 to 150 feet from the north shaft after the survey. I think the Orinoco ground about 150 feet, so that the line as they surveyed it was 100 feet further north than the former line. I don't know how far the south shaft was from the line.

X 70. When was the last work done on the Orinoco that you know of before to-day?

Ans. I know they were working on it last Tuesday.

X 71. When was the last work done on it in 1883 by anybody?

Ans. I don't know.

X 72. When did you last see anybody working there in 1883?

Ans. Some time last summer.

X 73. Are you acquainted with the corners and sides and work-

119 ings of the Gunnison lode?

Ans. No, sir.

X. 74 Are you acquainted with the corners, sides, boundaries, or workings of the Birdie R.?

Ans. Only with the south corner and side stakes; those on the placer. I am not acquainted with the workings much.

X 75. How, then, did you testify positively in your testimony-in-chief that these lodes extended onto these placers or the Fanchon placer, asserting the fact so to be?

Ans. Well, I told mostly the Gunnison lines. All I know about the Gunnison is a corner that was pointed out to me from the road, where they were putting down the patent stake. I saw the blazed line, Mr. Sawyer's line. I don't think it was the right line, though. It was the one Mr. Sawyer's party claimed to be their south line. As to the Birdie

R., I saw their side-line stakes and the two north-end stakes. Also parties have told me, owners of the Gunnison, where the lines were and how much it ran onto the placer.

X 76. Have you and Mr. Bloss ever together examined for any of the corners or lines of either the Dinero, the Orinoco, Gunnison, or Birdie R. claims?

Ans. We never have together.

X 77. If you have done it separately have you ever discussed their whereabouts?

Ans. Not that I remember now.

X 78. Whereabouts is the Michigan Boy?

Ans. I should judge it was located about 400 to 500 west of the Birdie R.; it may be a little more or less.

120 X 79. Who are the locators?

Ans. I don't remember them now. I have seen them. Don't know their names.

X 80. When was it located?

Ans. I think in 1879. I saw the stake.

X 81. Did you examine the workings?

Ans. I didn't examine the old workings. I worked there last summer myself and sank a new shaft.

X 82. Did you relocate it?

Ans. No, sir.

X 83. How did you come to work these?

Ans. Mr. Garr—William Garr—had a contract with Mr. A. E. Pogue, the owner, and I worked for him.

X 84. What work did you do on the Michigan Boy last year?

Ans. I helped to dig several cuts north and south of the shaft, and helped to sink a shaft, or incline rather, forty-odd feet.

X 85. Was the claim then known as the Michigan Boy?

Ans. Yes, sir.

X 86. What work had been done on it from 1879 until last summer? (Objected to as immaterial.)

Ans. I couldn't say for sure. I should judge from the dump it was 65 feet deep.

X 87. Was that the shaft at which you saw the discovery post?

Ans. Yes, sir.

X 88. Did you ever see any mineral that was taken out of the

121 Michigan Boy, and when, what kind, and where?

Ans. Yes, sir. I saw it in the old shaft in Feb'y, 1880, first. It was blue quartz, carrying mineral; I should judge, peacock quartz. I had no assay made. I took some out last summer from the new shaft; brown quartz, chloride stained. Couldn't say what it ran. Didn't see the assay.

X 89. Did you see any wall rock at either of these times? If so, describe it.

Ans. Saw the hanging wall. It was hard granite. It was in the new shaft, the only place I saw it. Never saw the foot wall till I went down on the hanging wall. The vein was half in the shaft.

X 90. Was the whole of the Michigan Boy on the Fanchon placer?

Ans. No, sir.

X 91. Which direction did it extend from the placer off from it?

Ans. South from the placer.

X 92. Were the workings done last year upon that part of the claim within the placer?

Ans. No, sir.

X 93. Were the workings done on this claim in 1879 on what is now the placer?

Ans. No, sir.

X 94. Then all of your testimony in regard to the facts that the Dinero, the Orinoco, the Gunnison, the Birdie R., and the Michigan Boy are lode claims, the veins of which extend upon or into the Fanchon placer, is based upon the fact that work has been done outside of it, is it not?

122 Ans. I think most all the veins cross the placer. I should judge they do. All that have been followed up do.

X 95. Name any of these that have been followed up and opened on the placer.

Ans. The Orinoco for one, I should think. It is opened up 300 ft., more or less, north of the Orinoco shaft, on the Fanchon placer, by Mr. Sawyer, after the vein was discovered. I couldn't say about the other, but they are claimed to be opened on the placers. Mr. Sawyer claims that he has opened up the Dinero and Gunnison in the placer. I have heard him say so himself.

X 96. Have you ever seen in any hole dug by anybody any of the five veins opened up on the placer; if so, describe them?

Ans. I have seen the Orinoco vein. It was, when I first saw it, I should judge, about 8 or 9 feet down, I won't say positively. It was a kind of grayish gouge, the same as the Orinoco had on the surface. Also saw fine blue quartz, came out of the shaft deeper down. Also saw what Mr. Sawyer claimed to be the Denver lode, opened up by his men. It was gouge matter, containing a little quartz, a light and yellow gouge. It was a cut, kind of a tunnel. I was in it. I couldn't say how far in I saw the vein from the beginning of the cut. I have seen nothing of the other three veins on the placer.

Adjourned to 2 p m.

2 p. m. resumed.

123 X 97. When did you see the Pen Yan first and last?

Ans. First that I saw it to know it, was in the summer of 1882. The last time I saw it was in the fall of 1883.

X 98. Did you examine the workings on it?

Ans. The last workings I took some notice of. It was the same vein I had.

X 99. What workings were there on it the first time you saw it in 1882?

Ans. There were several small shafts on it about 10 feet deep and a tunnel which I didn't go in. There was a shaft; from the looks of the shaft it must have been about 30 feet deep.

X 100. Were any of the workings that you saw in 1882 within the limits of the Fanchon placer?

Ans. No, sir.

X 101. Were any of the workings you saw in 1883 on the Fanchon placer?

Ans. No, sir.

X 102. Have you seen any workings within the Pen Yan claim on the Fanchon placer?

Ans. No, sir.

X 103. Then it is simply your opinion and not your knowledge from which you said the Pen Yan lode was on the Fanchon placer, is it?

Ans. The lode they are working now runs on the Fanchon placer. It is the same lode I have; the shaft they are working is about 10 or 15 feet from the end line of the Amozan.

X 104. When did you see the workings for the first time and when for the last time of the horseshoe vein?

Ans. The first and last time in the fall of 1882. I only saw them once.

124 X 105. Were they within the boundary of the Fanchon or Stinson placer?

Ans. I think the first shaft they started was on one of the placers, but whether the Stinson or Fanchon, I don't know. It was in one of them, anyway. And they had also started a cut over the hill which I don't hardly think was on either of the placers. It was on the Lake Park slope. They had flow there from a lode. I don't think they did any more work on it since, at that place.

X 106. Did you ever see, and, if so, when, a vein of mineral-bearing matter in rock in place in any of the workings of the Horseshoe lode?

Ans. No, sir; the vein when I saw it was not in place yet.

X 107. Was that vein, which you saw not in place, within the premises of either of these placers, and when?

Ans. Yes, sir; one was. I should say it was north a little east of Mr. Sawyer's cabin, where he lives now. I can't say the exact distance.

X 108. How deep in the shaft was it?

Ans. I should judge it was close on to six feet; maybe a little more or less.

X 109. What was the total depth of the shaft at that time?

Ans. About 6 feet; may have been a little more or less. They were just digging it at that time. That was in the fall of 1882.

X 110. Have you ever seen it since then?

Ans. No, sir.

125 X 111. When did you see the workings of the Main Louise claim for the first and last time?

Ans. I think in December, 1882, the first time, and some time in the summer of 1883 the last time.

X 112. Which, if any, workings had they at either of the times you saw it within the boundaries of either of these placers?

Ans. No workings within the boundaries.

X 113. What was the depth and extent of the workings outside of the boundaries, and how far from them?

Ans. I think, when I noticed the shaft, it must have been about 20 feet deep. Couldn't say how far from the boundaries. Must have been 500 or 600 feet; may have been a little more or less.

X 114. Were they on the other side of the crest of Sugar Loaf Mountain from the placers?

Ans. Yes, sir.

X 115. Did you ever see, in any of the holes dug by Mr. Sawyer on either of these placers, a vein of mineral-bearing matter in rock in place; and, if so, in which and when?

Ans. I don't know the names of his claims. In the claim north of the Orinoco I should judge he had mineral then in place. I saw gouge matter that I know would carry mineral. Don't know that it was in place, as I didn't see the foot wall. It was a straight shaft about nine feet deep. I couldn't say whether it was December, 1882, or January or February, 1883, that I saw it. I wouldn't say I saw any other veins in the place, as the holes were not deep enough.

126 X 116. Give me your definition of a vein.

Ans. A vein is a fissure of soft matter in the rock, containing *soft matter in the rock, containing* quartz, gouge, gangue, and other mineral substance, and having two well-defined walls, or one, either. Some veins have but one wall well defined.

X 117. Is it in your judgment as much a vein if but one wall exists as if there are two?

Ans. No, sir; I don't think it is. I think if they would follow a vein down far enough they would have two good walls in most all veins.

X 118. Can you tell whether it is a vein or not before you have found the two walls?

Ans. I think I can if the vein matter is regular enough.

X 119. Have you not been very active in consulting with and aiding Mr. Berry in regard to the preparation of this case and the procuring of testimony on the part of the complainant?

Ans. I don't think I have. No, sir; I have not.

X 120. Did you never name to Mr. Berry or to Mr. Bloss the name of other witnesses for your side of the case?

Ans. No, sir; not to my knowledge to either of them. I have not taken enough interest in it during the last year.

X 121. What interest did you take before that?

Ans. I found a good vein in the placer, and at that time I would have liked to hold it. I was told they hadn't received a patent then for the property. I examined the records in the land office in December,

127 1882, and didn't find them recorded as patented.

X 122. And that was when you made the agreement with Bloss, was it?

Ans. It was in the same month.

And thereupon, as redirect examination, said witness PUTMAN further testified as follows:

Redirect 1. What, if anything, did Mr. Sawyer ever say to you about his having found lodes, leads, or veins of mineral on the placers mentioned, or either of them?

(Objected to as incompetent, irrelevant, and immaterial.)

Ans. A year ago or a little over he told me he had found what he thought was the Dinero vein. He also told me some time ago, I don't know how long, that he thought he had the Gunnison vein. He said he ran the tunnel to cut his vein; I don't know what he called it. He

didn't say what he had found in his tunnel. He said he had found the Dinero vein, but he didn't like it, as it didn't look very well.

(S'g'd) LOUIS PORTMAN.

Subscribed and sworn to this 22 day of February, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

And thereupon WILLIAM M. GAAR, a witness of lawful age, produced on the part of the plaintiffs, being by me first duly cautioned and sworn, on oath testified as follows in response to interrogatories to him
128 propounded by A. W. BRAZEE, esq., attorney for said plaintiff.

Int. 1. State your name, age, residence and occupation.

Ans. My name is William M. Gaar; age, 27; residence, Soda Springs, Colorado; occupation, clerk in a grocery, but have followed mining ever since I have been in the State.

2. How long have you been engaged in the business of mining, in what branches, and where?

Ans. Since June, 1879, I was prospecting for carbonates at Silver Cliff. My next prospecting was at the head of Frying Pan Gulch, in 1880, and have been there ever since.

3. What discovery of mineral in vein, lode, lead, or ledge in rock in place carrying silver or gold or ores thereof have you made on the Fanchon or Stinson placer claims about the head of Buffalo Gulch? If any, state when such discovery was made, the nature of the wall rock, vein material, and character of the ore, fully.

Ans. I made a location on one of those placers, I can't say which, it may be partly, or both, called the Horseshoe. Myself, W. W. Miller, and Frank Carr were the locators. We located in 1882—November, I think. We did our asses'ment work and found what we called a vein. Since that time I have not done any work on it myself, but have paid my part right along. I have been so busy that I didn't ever get a chance to look at it. At that time we had a granite wall, foot wall, but I didn't think it was in place myself. The ore was a sulpheret, the streak we had. The vein matter was decomposed quartz; I guess you might call it gouge and gangue.

129 4. How long have you been familiar with the country around the head of Buffalo Gulch, to the west of the head, on both sides of it from the head of the gulch eastwardly.

Ans. I have been acquainted with the western portion of the gulch since 1880; I think in February or March. The eastern portion, I don't think I was over there till 1881 or 1882.

5. State what surface indications of lodes, if any, you have observed on the ground of the Fanchon and Stinson placer claims, or either, and how extensive and conspicuous to a person passing over that ground when you first knew it, or the different portions of it, such indications were.

Ans. The first time I went over the ground I found lots of float, blossom rock, which I supposed to be from lodes. I found Mr. Sawyer prospecting there. I did not pay much attention to his prospects at the time. He told us there was no vacant ground in there, and we didn't pay much

attention to it. I thought the indications were good myself. The ground was covered with blossom rock, especially in the gulches and ravines.

6. What indications of placer working have you seen on the Fanchon or Stinson claims? If any, describe the location of the same and the time when you first saw them.

Ans. I have never seen any indications of placer work.

7. If there had been any such in 1880 or 1882, would you have probably discovered them?

130 (Objected to. The question calls for the witness' guess, and is incompetent.)

Ans. As I have been over the western portion of the placers, I think I could have seen it if there had been any such work. I have never seen any placer work on these placers.

8. State the names, if any you know, of lode mining claims, or describe the same, if you do not know the names on the Stinson or Fanchon placer claims, in whole or in part, what you know in respect to the same and the character of the ores respectively.

Ans. The Amazon lode owned by Portmen and Eisenmenger, located in 1882; I think it is on the Fanchon placer. I at one time had an interest in a lease on it. We worked five weeks; think we sank it about 20 feet. We took out 5 or 6 tons of low-grade ore, too low to pay. It was sulpheret ore carrying silver. We had several assays and mill runs, some assays as high as 60 ounces. The highest mill run was 15 ounces. We found solid foot wall of granite. The lode was gangue rock, and decomposed quartz, and low-grade mineral. The extension of the Amazon lode was owned by Stiteler Brothers, the Advance. I have been on the dump. Found the same material on the dump as we found in the Amazon. I had ore brought to me from the Horseshoe assayed, and it assayed 300 ounces and upward. I also saw the returns of assays that others had made—(objected to; defendant objects to anything told witness by others)—

131 and they showed 742 ounces of silver, and 81 ounces. That is about all the lodes that I know much of anything about.

9. What, if anything, do you know of lodes or leads worked by James A. Sawyer, or under his direction, on said placer claims?

Ans. Mr. Sawyer has what he claims to be the extension of the Orinoco, on the side of the road. It looks to me as if it might be a lode. That is the only one I know anything about. I haven't been to any of his workings.

10. What do you know about the Gunnison, Dinero, or other claims lapping on to these placers, or either of them?

Ans. The Gunnison laps on the placer about 200 feet, as near as I can judge from stepping it. The Dinero laps about 150 feet, probably. I have never seen the stakes of any of the others and I couldn't say.

And thereupon, on cross-examination, said witness GAAR further testified as follows:

X 1. What interest do you at present own in the Horseshoe?

Ans. One-fourth interest.

X 2. Who owns the other 3-4 and in what proportions?

Ans. I could not answer.

X 3. Are you acquainted with Joe Bloss, spoken of here, the gentleman at whose house Mr. Berry, the United States officer having charge of this case, lives, and has been living for some time?

Ans. I am.

132 X 4. Do you not know that he or his wife have an agreement for an interest in this claim or are now owners of an interest in it?

Ans. I do not.

X 5. Have you never heard from any one that this is the case?

(Objected to as calling for hearsay, and incompetent.)

Ans. I have.

X 6. State from whom and what you have heard about it.

(Objected to as calling for hearsay, and incompetent.)

Ans. I couldn't say who told me. I heard that Mr. Bloss had bought out the other parties. I sold a twelfth out of my third to Frank Myrick.

X 7. Who did the assessment work on the Horseshoe in 1883?

Ans. I paid Frank Myrick for my part of it.

X 8. Who paid for the other part of it?

Ans. I don't know; I never heard.

X 9. How much did you pay?

Ans. I paid $25 and some odd cents.

X 10. When did you see the Horseshoe workings last?

Ans. When I quit work in 1882.

X 11. At that time I understood you to say that there was no vein in place; is that so?

Ans. I thought at the time that there was none.

X 12. Were those workings within the lines of either of these placers?

Ans. They were, if the placer patent survey is correct.

X 13. When did you first go upon the workings of the Amazon?

133 Ans. On the day of their location—in November, I think, 1882.

X 14. How deep was their shaft then?

Ans. About 4 or 6 feet.

X 15. Was there then visible a vein of mineral-bearing matter in rock in place?

Ans. There was.

X 16. What was the character of the two rocks in which the vein was found?

Ans. The foot wall was solid granite; don't see any hanging wall.

X 17. Have you ever seen a hanging wall there?

Ans. I have not.

X 18. Did you ever examine the inside of any of the shafts of the Stiteler Brothers on the Advance?

Ans. I did not.

X 19. Did you ever see any hanging walls in any of those shafts?

Ans. No, sir.

X 20. Is the crest of Sugar Loaf Mountain between the workings on the Gunnison and Dinero lodes and the line of the Fanchon placer?

Ans. It is.

X 21. Is there not a clearly marked uprise of solid rock running down and approximately at right angles to the veins on the Gunnison and Dinero claims between their workings and the Fanchon placer line?

Ans. There is on the surface; it is like cutting a strike in two. The blow-out broke the *the* lead in two.

X 22. Since March, 1880, have you not been familiar with these placer patented premises?

Ans. I can't say that I have.

134 X 23. How often have you been on them?

Ans. I have probably crossed them a thousand times.

X 24. And the veins or lodes you have testified about are all that you know to be there, are they?

Ans. Yes, sir.

And thereupon, on redirect examination, said witness Gaar further testified as follows:

Redirect 1. Is not this crest of rock, to which your attention has been called on cross-examination, broken or creviced in places?

Ans. It is, and in fact the length of the blow out, from one end to the other it is broken up. I have seen holes sunk on it which proved it to be so.

Redirect 2. Do you know whether the Gunnison lode cuts this crest of rock?

Ans. I do not.

Redirect 3. Do you know whether the Dinero cuts this crest of rock or not?

Ans. I do not.

Redirect 4. Do you know whether there are any workings on the Gunnison lode and Dinero lode inside of the Fanchon placer, from your personal knowledge or from what Mr. Sawyer has said to you or in your hearing?

Ans. I have seen prospect holes, but I don't know what was found. I have seen holes on both these lodes dug by Mr. Sawyer's men, but didn't look to see what they found.

(S'g'd) WILLIAM M. GAAR.

Subscribed and sworn to this 22d day of February, A. D. 1884, before me.

135 (S'g'd) ROBERT H. BUCK,
Examiner.

Adjourned by agreement of counsel to March 6th, 1884, at ten o'clock in the forenoon, at the same place.

Parties by their counsel consent that the testimony for complainant and defendant heretofore taken may be taken by complainant's counsel for perusal by counsel of both paties and to be returned at the next hearing.

(S'g'd) BOBERT H. BUCK,
Examiner.

And on this sixth day of March, A. D. 1884, at ten o'clock in the forenoon, I was attended by the same counsel as heretofore on the part of the complainant, and by G. G. Symes, esq., on the part of respondent, and no witness being produced, the taking of testimony herein was adjourned to two o'clock p. m.

MARCH 6, A. D. 1884—2 o'clock p. m.

Resumed.

And thereupon JOSIAH A. EADE, a witness of lawful age, produced on the part of said complainants, being by me first duly cautioned and sworn, on oath testified as follows, in response to interrogatories to him propounded by A. W. Brazee, esq., attorney for said complainants.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Josiah A. Eade; age, 34; residence, Leadville; occupation, miner.

136 2. How long and where have you been engaged in the business of mining, and in what branch of mining?

Ans. About 15 years; in Michigan, Canada, Illinois, and Colorado, and almost exclusively in lode mining.

3. State whether you have been employed upon the Iron mine so called, or the property of the Iron Silver Mining Company, at or near Leadville, Lake County, Colorado, and when such employment commenced and when it ended.

Ans. I have been so employed. When I first worked there, there was no iron mining company. I worked for Wood and Stevens, and then for Stevens and Leiter, and I began on May, 1876, and left the first of March, 1880, about the time the Iron Silver Mining Company was organized, I think. Since then I began to work for them in January, 1883, and remained with them until September 1st, same year.

2. State, if you know, the full names or initials of said Stevens and Leiter.

Ans. William H. Stevens and Levi Z. Leiter.

5. What business were they engaged in together before the time you quit their service in March, 1880, if any?

Ans. I only know as to this particular locality. They were engaged in mining.

6. Upon what properties were they engaged in mining during said time?

Ans. As far as I know from personal observation, on the Iron claim, the Iron Hat, Bull's Eye, Lime, Stone, Rock, and Bome claims.

137 7. About when did they jointly commence the mining business together in this locality?

Ans. It was, I believe, in 1877.

8. Do you know whether they claimed to be the owners of said mines?

(Objected to as immaterial, irrelevant, and not the way to prove ownership of property by parol.)

Ans. I understood that they did; I believe that's what they claimed.

9. Who, during the time referred to, were in possession of the mines you have mentioned, directing the work and development thereof?

Ans. I had the directing of all the underground work during my entire time with the company.

10. Who employed you?

Ans. First, William H. Stevens, then Stevens and Leiter.

11. What, if any, acts of ownership, control, or dominion did William H. Stevens and Levi Z. Leiter, or either of them, exercise in directing the

development of said mines or employing men who did the work thereon during the time of your employment thereon?

(Objected to. The witness should not testify as to anything except as to what he saw and heard himself, and it is irrelevant and immaterial.)

Answer. Their acts were as owners throughout. They were
138 about the mine and employed the officers, and the men were employed by those officers, the men in my department by myself, and in other departments by the heads of each department.

(Answer is objected to as not responsive to the question.)

12. When did you first know the Iron Silver Mining Company?

Ans. It was, I think, in March, 1880, perhaps April.

13. State what mines or claims, so far as you know, the Iron Silver Mining Company controlled and operated during your employment by it in 1883.

Ans. I can't state all. There were those already mentioned and the Wells and Moyer placer and the William Moyer placer. Those are all I can think of now.

14. Do you know W. Arens, F. H. Reims, A. M. Rucker, M. J. David, O. S. Crowther, P. Henderson, and Lou Rucker, or either of them? If so, how long have you known them?

Ans. I know them all. I have known Mr. Arens 12 or 15 years, may be more, and the others 5 or 6 years, I guess.

15. In whose employ were they in June, 1879?

Ans. Some of them in the employ of Stevens and Leiter, that is, W. Arens, A. M. Rucker, and Mr. Crowther. About the others, they were employed off and on by Stevens and Leiter, but whether at that particular time or not I don't know. I think P. Henderson was.

16. Do you know the Stinson and Fanchon placer claims, either by being on the ground or from what you have heard said Stevens and
139 Leiter, or either of them say? If so, state your knowledge of the claims and what they, or either of them, may have said about the same before you quit their employment in March, 1880.

Objected to as immaterial, irrelevant, and incompetent.)

Ans. I know nothing of such claims. I never heard them spoken of.

17. What, if anything, have you heard them or either of them say before you quit their service in March, 1880, in respect to having timber placers anywhere?

(Objected to as incompetent, irrelevant, and immaterial.)

Ans. I don't remember of ever hearing either of them say anything about it.

And thereupon on cross-examination said witness EADE further testified as follows, in response to cross-interrogatories to him propounded by G. G. SYMES, solicitor for and on behalf of said respondents:

Cross 1. Did your employment up to March, 1880, familiarize you with all the property, business, and plans of working and operations of Stevens and Leiter or the Iron Silver Mining Company?

Ans. It did not.

X 2. In June, 1879, what was J. A. Sawyer doing?

Ans. I don't know.

X 3. W. Arens?

Ans. Arens was in the employment of Stevens & Leiter; I cannot say in what capacity.

X 4. J. H. Reims?

Ans. I don't know.

140 X 5. A. M. Rucker?

Ans. As surface foreman for Stevens & Leiter.

X 6. M. J. David?

Ans. I don't know.

X 7. O. S. Crowther?

Ans. I don't know in what capacity. He was employed there at that time to the best of my knowledge.

X 8. P. Henderson?

Ans. As book-keeper.

X 9. L. Rucker?

Ans. I don't know.

(S'g'd) JOSIAH A. EADE.

Subscribed and sworn to this 6th day of March, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

And thereupon counsel for complainant offers in evidence a certified copy of U. S. mineral patent No. 4756 for the claim of James A. Sawyer upon the Stinson placer, Leadville, Colorado, land district, herewith returned marked Exhibit A. Also certified copy of U. S. mineral patent No. 5100, for the claim of James A. Sawyer upon the Fanchon placer, Leadville, Colorado, land district, herewith returned marked Exhibit B. Also certified copy of the papers in the matter of Leadville, Colorado, mineral entry No. 286, for the claim of James A. Sawyer upon the Fanchon placer, which is herewith returned marked Exhibit C.

Also certified copy of the papers in the matter of Leadville, Colorado, mineral entry No. 285, for the claim of James A. Sawyer upon the Stinson placer, which is herewith returned marked Exhibit D.

141 Also certified copy of certificate of incorporation of the Iron Silver Mining Company, which is hereto annexed and marked Exhibit E. Also certified copy of location certificate of Paxton lode, purporting to be located on the 25th day of July, A. D. 1879, which is hereto annexed and marked Exhibit F.

(Defendant objects to the Paxton lode certificate because it is not connected with the premises in controversy.)

Also certified copy of location certificate of the Ferguson lode, purporting to be located on the 24th day of July, A. D. 1879, which is hereto annexed and marked Exhibit G.

(Defendant objects as last above.)

Also certified copy of location certificate of the Andrew Jackson lode, located the 28th day of June, A. D. 1879, which is hereto annexed marked Exhibit H.

(Defendant objects as last above.)

Also certified copy of location certificate of the Bonanza Queen lode, located the 28th day of June, A. D. 1879, which is hereto annexed marked Exhibit I.

(Same objection as last above.)

Also certified copy of certificate of location of the Lizzie Bell lode, located the 28th day of June, A. D. 1879, which is hereto annexed marked Exhibit K.

(Same objection as last above.)

Also certified copy of certificate of appointment of agents of the Iron Silver Mining Company, dated October 5, 1880, which is hereto annexed and marked Exhibit L.

142 (Objected to as irrelevant and because the copy as offered in evidence is not by the statutes of Colorado made evidence.)

Also, certified copy of location certificate of the Gunnison lode, located May 31, 1879, which is hereto annexed, marked Exhibit M.

(Objected to because the Gunnison lode is not connected with the premises in controversy.)

Also, certified copy of quit-claim deed, Louis Rusker to James A. Sawyer, dated March 31, 1880, conveying the Fanchon and Stinson placers, which is hereto annexed and marked Exhibit N.

Also, certified copy of quit-claim deed, Mark J. David to James A. Sawyer, dated 13th of April, 1880, conveying the Stinson and Fanchon placer claims, which is hereto annexed, marked Exhibit O.

Also, for certified copy of quit-claim deed, W. Arens, F. H. Reims, P. Henderson, A. M. Rucker, M. J. David, O. S. Crowther, and L. Rucker to James A. Sawyer, dated Feb'y 2, 1880, conveying the Fanchon and Stinson placer claims, which is hereto annexed and marked Exhibit P.

Also, certified copy of warranty deed, James A. Sawyer to the Iron Silver Mining Company, dated Feb'y 7, 1882, conveying the Fanchon and Stinson placer claims, with certain exceptions, which is hereto annexed, marked Exhibit Q.

Adjourned to 7th inst. at 10 a. m.

143 MARCH 7TH, 1884—10 o'clock a. m.

Resumed.

And thereupon ERNEST HOELKE, a witness of lawful age, produced on the part of the complainant, being first by me duly cautioned and sworn on oath, testified as follows in response to interrogatories to him propounded by A. W. BRAZEE, esq., attorney for said complainant.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Ernest Hoelke; age, 44; residence, Leadville; occupation, druggist.

2. I show you protest against the issuance of patent to Fanchon placer claim by E. Hoelke et al., in Exhibit C, certified, &c., and ask you to read said protest or so much thereof as will enable you to state whether or not you are the E. Hoelke mentioned in said protest.

Ans. I am the one there mentioned.

3. State, if you please, how the controversy between the Juniata lode claim mentioned in that protest and the Fanchon placer claim was settled.

Ans. In order to relate that I must describe the whole proceedings from beginning to end. We were one of the earliest locators on that hill, and we had located our claim at least several months prior to the location of the Fanchon placer. We had no intimation that a placer claim had ever been located there, or that there would be any conflict. I could find no

stakes. There might have been stakes there without my noticing
144 them. Being frequently out there, I never saw any sign of placer work being done on the ground in conflict. It is covered with snow seven to nine months in the year. We never had any idea that we would be adversed in applying for a patent, because we never thought that anybody would locate a placer on top of that hill; and therefore we never looked for any application for patent in any paper and let the time slip by without adversing the application for patent to the Fanchon placer in the land office here. We only learned that a patent had been applied for when we applied for a patent ourselves. We compromised with the owners of the Fanchon placer and received a deed from them for the ground in conflict between the Juniata and the Fanchon, by deeding over to the Fanchon owners either all or half the timber on the ground in conflict. The deed they gave us is on record. We received since a Government patent for the whole lode claim, the Juniata, without any exceptions.

4. When and with whom was the negotiation for settlement of the controversy between the Juniata claim and the Fanchon claim which resulted in the compromise you have mentioned carried on?

Ans. It was immediately after we applied for a patent, when we found out that there was a conflict. First with Mr. James A. Sawyer and his attorney, Judge A. S. Weston, and with Mr. Arens, manager of the Iron Silver Mining Company.

5. State, as near as you can remember, the times when the Juniata lode was discovered and located on the ground.

145 Ans. I believe in August, 1879, it was discovered.

(Defendant objects to question and answer, because the record of location is the best evidence.)

(Witness continues.) I believe it was located about a month later. I was not one of the locators, as I remember.

6. How often were you on the ground where the Juniata was located and the ground in that vicinity while it was bare of snow in 1879?

Ans. The number of times I cannot state. I have been on the ground as frequently as once a week in 1879 or 1880; sometimes once a month only.

7. What indications of lode claims or lodes, leads, veins, ledges of mineral gold, silver, or other precious metals in rock in place were apparent on the surface of the ground in the locality mentioned in 1879; if any, describe the same fully.

(Objected to; witness has not been shown competent to testify as an expert, and the premises regarding which he is asked are not sufficiently definitely stated in the question.)

Ans. None that I know of. We discovered iron-bearing rock carrying traces of silver on the ground of the Juniata not in conflict with the Fanchon. We sank a shaft on such poor indications, and a good deal later discovered a vein.

And thereupon on cross-examination the said witness HOELKE
146 further testified as follows in response to cross-interrogatories to him propounded by G. G. SYMES, esq., solicitor for and on behalf of said respondents:

Cross 1. Are you a miner?

Ans. No, sir.

X 2. How much mining had you done as an amateur before you went on that ground?

Ans. Very little.

X 3. Did you know placer ground from lode ground? Could you distinguish veins from washings before you went on these premises?

Ans. I did know the difference between placer ground and lode ground. I believe I could distinguish veins from washings before I went there.

X 4. What is placer ground?

Ans. It is gold-bearing ground generally located in gulches in places through which formerly rivers ran.

X 5. What is vein in lode ground?

Ans. Any ground. You may find veins any where.

X 6. What time in 1879 did you first go on the premises, and with whom?

Ans. I suppose in the month of August, 1879, with Dr. J. H. Heron.

X 7. What work was done on the Juniata location at that time?

Ans. To the best of my recollection a shaft about ten feet deep was sunk.

X 8. Was that shaft on the Lake Park Creek side of the hill?

Ans. It was.

147 X 9. Does the crest of the hill run between that shaft and the Fanchon placer ground?

Ans. It does.

X 10. Have you ever done any workings on the Juniata claim, on the Fanchon placer side of that crest?

Ans. Never.

X 11. Have you ever done in that shaft any other workings on the Juniata than those in that first shaft subsequently done by you?

Ans. Not that I recollect.

X 12. At what time and at what depth did you find in that discovery shaft what you believe to be a vein of mineral?

Ans. Forty to forty-five feet below the surface. I couldn't tell the date. Before our application was made for patent on the Fanchon placer.

X 13. How often were you on the Juniata premises in the month of August, 1879?

Ans. Probably 3 or 4 times.

X 14. What depth did you sink that shaft during the month of August, 1879?

Ans. I couldn't tell. I think the shaft reached a depth of 60 to 65 feet in the month of September, 1879.

X 15. How often were you on the premises in the month of September, 1879?

Ans. I cannot tell. In September I went to St. Louis and was gone a month.

X 16. How often were you on the premises in October, 1879?

Ans. Less in October than in September; probably twice.

X 17. In going from here to your workings on the Juniata in 1879, did you pass over any portion of the Fanchon placer?

Ans. Always. The first month or two we went over the Fan-

148 chon; later we went without going over that ground, by Lake Fork, and climbing the mountain.

X 18. When you first went there did you not go from the Shields mine over the crest of the hill and down to the workings.

Ans. We did

X 19. Going that way when do you cross over the premises of the Fanchon placer?

Ans. In crossing the crest of the hill.

X 20. Does the Fanchon placer extend between the Shields mine and the workings of the Juniata claim at any point?

Ans. I don't know how far it washes towards the Shields mine, but I know we had to cross the portion of the placer to get to one shaft. I know it by the map.

X 21. Not by the ground?

Ans. No, sir.

X 22. Did you see any lodes cropping out in what you believed to be the Fanchon placer, at any point.

Ans. None.

X 23. Is not the Fanchon placer as you believe it to be covered with wash, and gravel, and dirt, in a general way?

Ans. It is. More with wash than with gravel.

X 24. What is the difference between wash and gravel?

Ans. Gravel, you generally find where there have been mines formerly, while wash is a result of the action of ice.

X 25. This definition given by you is the result of your mining experience?

Ans. It is my personal idea from reading about it.

149 And thereupon on redirect examination said witness HOELKE further testified as follows:

Redirect 1. In August, 1879, when you went to the shaft on the Juniata, which gulch did you go up to reach the point where the shaft is located?

Ans. Up Frying Pan towards the Shields mine.

Redirect 2. On any of those occasions did you go through Buffalo Gulch, so called?

Ans. I don't know that I was ever in Buffalo Gulch but once, that was in 1883.

(S'g'd) ERNEST HOELKE.

Subscribed and sworn to this 7th day of March, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

DAVID G. MILLER, being duly sworn, on oath testified as follows on the part of the complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is David G. Miller; age, 26; residence, Leadville; occupation, mining engineer.

Int. 2. I show you a connected plat marked Exhibit A, and ask you whether you have examined approved surveys in the Leadville U. S. Land Office, and from such examination are able to state whether this

Exhibit A shows correctly the intersection and coincidence of the outboundaries of survey No. 661 Stinson and survey No. 660 Fanchon.

Ans. I haven't examined the official records in the Land Office,
150 but I have examined United States patents, which are here marked Exhibit A and Exhibit B, and from the connections given to the quarter corners, corner 1 of Fanchon placer survey 660 and corner 1 of Stinson placer survey 661 are identical. Also, 2 of 661 and 7 of 660 are identical.

(S'g'd) DAVID G. MILLER.

Subscribed and sworn to this 7th day of March, A. D. 1884.

(S'g'd) ROBERT H. BUCK,
Examiner.

Complainant offers in evidence connected plat mentioned by the last witness, marked Exhibit A.

(Objected to as irrelevant and immaterial.)

Adjourned to 2 p. m.

2 o'clock p. m. Resumed.

And thereupon LOUIS K. RUCKER, a witness of lawful age produced on the part of the complainant, being by me first duly cautioned and sworn, on oath testified as follows in response to interrogatories to him propounded by A. W. Brazee, esq., attorney for said complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Louis K. Rucker; age, 27; residence, Leadville; occupation, miner.

2. How long have you been engaged in mining and where and in what branches?

Ans. For the past five years, with exceptions occasionally of a month or two, in Lake and Chaffee Counties, in lode mining.

2. Do you know William H. Stevens, Levi Z. Leiter, James
151 A. Sawyer? If so, state how long you have known them respectively.

Ans. I do not know them. I have known Mr. Stevens between 6 and 7 years, Mr. Leiter and Mr. Sawyer for between 4 and 5 years.

3. Have you ever been in the employ of William H. Stevens and Levi Z. Leiter or either of them? If so, when and in what business?

Ans. I have been in the employ of both Mr. Stevens and Leiter here in Lake County, in the mining business in its different branches.

4. Upon what mining claims or mines were you engaged while so employed by them?

Ans. I have been engaged on about all of the property that they owned in this county with the exception of the Fanchon and Stinson placer claims. I have not done more than three days' work on those claims.

5. Do you know the Iron Silver Mining Company?

Ans. I do. I am in their employ.

6. How long have you been in the employ of that company?

Ans. A greater part of the time for four years.

7. In what capacity were you so employed, and what were your duties in respect to such employment?

Ans. As miner, assistant to the surveyor, sampler, and ore settler and as foreman. My duties were such as pertain to such employment. As miner I mined in the mine. As assistant to the surveyor I carried chain, assisted in making surveys and made some myself. As sampler
152 and ore settler I watched the samples made and made all the settlements for ore. As foreman I have had charge of work for the company, both mining work and work on the surface.

8. What mines has said company been operating during the last four years?

Ans. The Iron mine, Stone, Rock, Dome, Seventy-Six, Moyer, and also doing prospecting on the Fanchon and Stinson placers.

(Question and answer objected to as immaterial and irrelevant.)

9. What offices have William H. Stevens and Levi Z. Leiter, respectively, held or acted in in respect to said company during the last four years, if any?

Ans. I don't know as I can state what their official positions have been with the company with any degree of certainty at all.

10. State in what official stations they have acted so far as you know?

Ans. I believe they have been the owners of the principal part of the stock of said company and have acted in the capacity of president and directors.

11. Do you know W. Arens, T. H. Raines, or Reims, A. M. Rucker, M. J. David, O. S. Crowther, and P. Henderson; and how long have you known them respectively?

Ans. I have known them all from 5 to 20 years.

12. State where they are, so far as you know?

Ans. Mr. Arens is in New York at present, I believe, although his headquarters are at Leadville. Rames is dead. A. M. Rucker is
153 in Leadville. I don't know where David is, nor Crowther. P. Henderson is in Leadville.

13. I call your attention to copies of location certificate and relocation certificate on the Fanchon placer claim in Exhibit C, and ask you if you are the L. Rucker whose name appears in these certificates?

Ans. I am, but I never seen the location certificates or the copies of them before these are now shown me.

14. Were the locators, whose names appear in these certificates, in the employ of Messrs. Stevens and Leiter at or about the times they are respectively dated, viz, Nov. 12, 1879, and Dec. 5, 1879?

Ans. They have all been in the employ of Stevens and Leiter. Whether they were in their employ at that time or not I cannot state, as I do not remember.

15. I call your attention to the location certificate on the Stinson placer claim and the relocation certificate thereon as the same appear in Exhibit D, and ask you if the locators in these certificates named were in the employ of Stevens and Leiter at their dates, viz, Nov. 12, 1879, and Dec. 5, 1879?

Ans. I can't tell; I do not remember. They have been in the employ of Stevens & Leiter.

16. Do you know by what person and by what authority your name was used as a locator in the certificates of location and relocation in these placer claims? If so, state fully.

Ans. I do know that Stevens and Leiter used my name. As to their authority it is a common thing for people to locate claims in this
154 country in other names, and as I was in their employ at the time, they located the claim in my name in part, trusting that I would not object to it, but without saying anything to me of it.

17. When did you first learn that your name had been so used in respect to these locations, and what was the circumstance which called your attention to the fact of such use.

Ans. I first learned of that my name had been used in February or March, 1880, when a deed was sent to me to sign deeding my interest in those claims to Stevens and Leiter.

18. Was this deed to Stevens and Leiter, or to James A. Sawyer? And for the purpose of refreshing your memory on this subject I now show you Exhibit N.

Ans. From this Exhibit N it appears that I signed the deed to James A. Sawyer, but it was so long ago that my memory was indistinct in making my last answer.

19. At whose request did you execute this deed?

Ans. I cannot state positively, as I don't remember, but it was at the instance of Stevens and Leiter, though whether they directly requested it I cannot say. Possibly it may have been at the request of Mr. Arens.

20. State, so far as you know, the practical experience in mining which William H. S. Stevens and Levi Z. Leiter, or either of them, had had in Colorado before 1881, and your means of knowledge on this sub-
155 ject, from your observation or from what either of them may have said in respect to his experience in this behalf.

(Objected to as entirely irrelevant and immaterial.)

Ans. I don't know as I ever had any conversation with either Stevens or Leiter about their experience in mining before 1881, but from my own knowledge Mr. Stevens has mined in Colorado during the years of 1879 and 1880 and for a number of years previous to that time. Mr. Leiter's practical experience as a miner is very small.

21. Do you know Charles Clary, who worked at placer mining in Buffalo Gulch in 1883?

Ans. I do.

(Objected to as immaterial.)

22. What relation did you have with the work which he and others with him performed in Buffalo Gulch in that year, or with employing him or them to do such work? If anything, state fully.

Ans. I took him and others over to see the ground and prospect it and told them I thought there was a pretty good thing in working it on a lease. Further than that I had nothing to do with it whatsoever.

23. State, if you know, what person or company furnished the money for the work and material performed and furnished by Clary and others after you so showed them the ground.

Ans. I don't know who furnished the money, but I suppose they furnished it themselves.

And thereupon said witness RUCKER further testified, on cross-examination, as follows:

156 Cross 1. You assisted in making a survey of the Fanchon and

Stinson placers before they were located by the location certificates introduced in evidence, did you not?

Ans. I did.

X 2. Did you then make any examination regarding there being placer deposits in the ground covered by said placer claims?

Ans. I made no thorough examination, but as I passed over the ground I noticed evidences of placer work having been done before that time.

X 3. Describe the character of the placer work or mining that you observed.

Ans. The ground in Buffalo Gulch was broken and dug up to some extent and the firm gravel and soil carried away, leaving only the layer rock and boulders in and on the sides of the gulch.

X 4. Did you see sluice-boxes for washing gold in placer mining?

Ans. I saw what I was told was a sluice-box, an old log hollowed out, which they used here in an early day before they could procure lumber. There were also old riffles lying round in the gulch which had been used in placer mining.

X 5. What was the character of the ground covered by the Fanchon and Stinson placers; that is, was it wash or gravel, such as usually produces or contains placer gold in this country?

(Objected to as not cross-examination and as immaterial, and
157 witness has not shown experience in placer mining which would qualify him as an expert.)

Ans. The ground is wash and gravel, also black dirt or soil, and from my experience in placer mining and seeing placers I should say it was very favorable ground to find placer gold in.

X 6. Have you not seen considerable placer mining in the Leadville district and in Arkansas Valley?

Ans. I have, as well as in other places.

X 7. You say you took parties to this ground and showed them this placer ground and thought and told them you thought it would be a good place to carry on placer mining on a lease; is that so?

Ans. Yes, sir.

X 8. Do you or not know that some parties did take a lease on the ground to carry on placer mining?

Ans. Yes, sir. Charles Clary and others had a lease on the ground and worked it as long as the water lasted.

X 9. Were there any mineral lodes or veins bearing gold, silver, lead, or other valuable deposits developed or exposed to view upon this placer ground before the application for said placer patent?

Ans. I never saw or heard of any.

X 10. Were there any veins or lodes of rock in place bearing gold, silver, lead, or other valuable deposits cropping out or to be seen on the surface of said ground within said placer claims before the said applications for patent?

Ans. I saw none.

158 X 11. You were over the ground when you assisted in making the surveys you have mentioned? Is it not common custom among prospectors and miners to locate both placers and lode claims in the names of other parties than the discoverers, and after the title has been acquired

by location and appropriation for such parties to convey the title to the discoverers and those making or having the locations made?

(Objected to as immaterial, improper. The custom cannot antagonize the law successfully, and in the second place witness is not shown to be competent to speak as to the custom.)

Ans. It is. I have seen it done a number of times, and have done it myself once.

X 12. Are not these placer claims located in the vicinity of a large portion of the placer mines in this part of the country?

Ans. They are. Some of the best placer mines in the country are located close to them. I mean by that about a mile off or less.

X 13. Are there not placer mines being worked every season close around and within 1,000 to 3,000 feet of these claims?

(Objected to as immaterial. Same objection to the last preceding answer.)

Ans. I have known of placer mines being worked every season in that section of the country for the past five years, and should not say that they were more than 3,000 feet away from these placer claims.

X 14. Is not the ground gravel and wash found upon the Stin-
159 son and Fanchon placers of the same character as that found where these placer mines are being worked, as you state?

Ans. To the best of my knowledge it is.

X 15. Is it to your knowledge a general custom of mining companies and corporations in this and other districts to acquire the possessory title to mining claims and mineral lands by having it located in the names of their agents and employees?

(Objected to as immaterial, irrelevant, improper, and incompetent.)

Ans. It is.

And thereupon, on redirect examination, said witness RUCKER further testified as follows:

Redirect 1. In whose employ were you when assisting to make surveys of Stinson and Fanchon placer claims?

Ans. In the employ of Stevens and Leiter.

Redirect 2. I show you Exhibit A^2, connected plat of said Stinson and Fanchon placers, and ask whether the sluice and riffles which you saw at the time of making said surveys were above or below the line of the Fanchon, between posts 2 and 3.

(Objected to as not redirect examination, and as immaterial.)

Ans. I can't say positively; I came across them as I was chopping out some underbrush and small pine trees to make an opening through which to run the line; but to the best of my knowledge they were about on the line. They couldn't be far from it.

160 Redirect 3. Did you see, on the occasion of making said surveys, any ground broken up and appearing to have had the firm gravel washed away from the boulders above the point where the easterly line of the Stinson crossed the bottom of Buffalo Gulch?

Ans. I did; near that point I couldn't say now whether the line ran directly over it above or below it.

Redirect 4. I call your attention to the date of the oath of verification of the minutes of surveys of said placers as they appear in Exhibits C and

D, to wit, January 14, 1880, and ask you whether those minutes of surveys are the minutes of surveys which you helped to make, being surveys for patent.

Ans. No, sir; they are not. The survey that I helped to make was the location survey, and not the patent survey.

Redirect 5. At what time were the surveys made that you helped to make.

Ans. Between the 1st and 12th of November, 1879.

Redirect 6. Was there snow on the ground at that time in that locality?

Ans. In some places there was from one-half an inch to an inch, where the sun did not strike it and melt it off.

(S'g'd) LOUIS K. RUCKER.

Subscribed and sworn to before me this 7th day of March A. D., 1884.

(S'g'd) ROBERT H. BUCK,
Examiner.

And thereupon, WILLIAM B. RAGLAND, a witness of lawful
161 age produced on the part of said complainants, being by me first duly cautioned and sworn, on oath testified as follows, in answer to interrogatories to him propounded by A. W. Brazee, Esq., attorney for said complainant.

Int. 1. State your name, age, residence, and occupation?

Ans. My name is William B. Ragland; age, 48; residence, Leadville; occupation, miner.

2. How long have you been engaged in mining, and in what branches principally?

Ans. About 7 years, mostly as superintendent, and manager of properties, my own and others, lode mines.

3. Do you know the ground where the Fanchon and Stinson placer claims are located, and the country about where they are located at or near the head of Buffalo Gulch?

Ans. I do.

4. How long have you known that ground?

Ans. Since the summer of 1879.

5. What discoveries of mineral in veins or lodes, or leads in rock in place carrying silver or gold or ores thereof, do you know of being made in the Fanchon or Stinson ground, or near thereto, and running thereon? If anything, state your knowledge on this subject fully, when the discoveries were made, the vein matter, and the character of such discoveries, and of the wall rocks.

(That part of the question which asks about discoveries not on
162 the Stinson or Fanchon placer is objected to as immaterial and irrelevant.)

Ans. I know of no discoveries on the Fanchon or Stinson placer during the year 1879. I know of the discovery of the Gunnison mine in 1879, which runs on the Fanchon about 250 feet. It is a fissure vein, granite walls, sulphate ore, carrying gold and silver, a very little lead, some zinc, iron. I also know of the discovery of the Dinero in 1882. It runs on to one end of the Fanchon. It is a similar vein in all respects to the Gunnison, and parallel with it. The Dinero is about 6 to 8 feet thick, and the Gunnison 4 to 5 feet. I also know of the discovery of the

Orinoco in 1883, I believe. It runs on the Fanchon I don't know how far. It is similar in all respects to the Dinero and Gunnison, and lies between and parallel with them. I know of other discoveries, but don't know of them personally. The Orinoco is about 4 to 6 feet in thickness.

6. To what extent have these three veins been developed, respectively.

Ans. The Gunnison has a shaft or incline about 260 or 265 feet deep. Three levels, the 1st level running north from the shaft 300 and odd feet in length on the vein, towards the Fanchon placer, the 2d level north over 200 feet on the vein, towards the placer; the 3d level 25 or 30 feet north on the vein. The levels south opposite those north, are, the 1st about 140 feet in on the vein, the second about 110 or 115 feet in on the vein, and the third a few feet only, it is just started. There are also up-
163 raises from the first to the surface, and from the second to the first, for air, &c. Then there are prospect holes on the vein tracing it on the surface. The output of the mine has been about $60,000, that being the mill returns, less smelting charges.

The Dinero I am not so well informed about, but it has about the same amount of development as the Gunnison, though in a little different shape. It has produced considerable ore, the amount of which I don't know, though it is several thousands of dollars. The ore runs well, from 40 to 200 ounces as per mill runs that I have seen.

The Orinoco is merely a prospect with one or two shafts, probably three. One 60 feet deep, another 30 feet deep. I have seen mill returns from that running 100 ounces. Assays are very high.

7. Who, if any one, has worked on these three veins or either of them within the bounds of the Fanchon, and to what extent?

Ans. I do not know.

8. How near to the Fanchon line do the north drifts on the Gunnison run?

Ans. Within about 150 feet of the line.

9. How near are these prospects on the Gunnison to the Fanchon line?

Ans. About 150 feet.

10. What, if anything, do you know of James A. Sawyer, or employees of the Iron Silver Mining Company, prosecuting lode mining work on either the Fanchon or the Stinson? If anything, state the extent and location of such work.

164 Ans. I know of Mr. Sawyer and men in his employment mining some drifts or tunnels prospecting on the Fanchon placer, the extent I cannot say.

(Question and answer objected to and also all evidence tending to show work or development since the application for the placer patent, because no work or development since has any bearing upon the legal rights of the parties at the dates of such applications.)

11. What indications upon the surface were there in 1879 and 1880 on the ground of the Fanchon and Stinson of lodes or leads or veins? If any, state the extent of such indications, how conspicuous or obvious they were to an experienced miner passing over the ground.

Ans. I can't speak as to the Stinson, as I was not on it in that year—1879. As to the Fanchon, the indications were nothing but ordinary float, wash. I could see scarcely any indications of fissures on the surface at all. The wash was pretty deep.

12. What is float, and what does it indicate, if anything, in respect to veins of mineral to an experienced miner?

Ans. Float is mineral supposed to flow from a fissure vein either near or far off. It indicates the presence of veins.

And thereupon said witness RAGLAND, on cross-examination, further testified as follows:

Cross 1. Are not all placer deposits supposed to have come from the erosion, denudation by the action of water and atmospheric agencies acting on lode deposits in place?

165 (Objected to as not cross-examination and immaterial.)

Ans. It is so, generally considered.

X 2. Are not lodes or veins in place in the Rocky Mountains generally found upon or in the vicinity of placer mines and placer deposits?

(Objected to as last above.)

Ans. They are.

X 3. Does not the mineral vein developed in the Gunnison lode claim apparently thin out or play out in the direction of the Fanchon placer?

Ans. Not more so than in the other direction. It opens and pinches and loses itself and comes in again. In the lower levels it is more continuous and uniform.

X 4. Does not the vein apparently in the upper levels extending towards the placer turn to the right down the hill so that it may not strike the placer in its extension?

Ans. It bears to the right down the hill, but not sufficient to throw it off the placer so far as its present bearing is concerned.

X 5. When you say the Gunnison lode extends about 250 feet across the Fanchon placer line, you mean the lode claim on the surface is surveyed that distance over the line, and not that any vein or lode has been developed within the boundaries of the Fanchon placer, do you not?

Ans. That is what I mean.

X 6. Had any mineral veins or lodes of rock in place been dis-

166 covered or developed within the Fanchon or Stinson placers before the applications for patents for said placers, to your knowledge?

Ans. No, sir.

X 7. Has there been any since, to your knowledge, developed within the boundaries of said placers?

Ans. I should have to say yes. I believe there has been.

X 8. How deep below the surface were the veins found to your knowledge?

Ans. The vein that I allude to as being discovered since the application for payment on the Fanchon placer is the Orinoco vein, discovered by Mr. Sawyer in 1883. I can't tell how deep below the surface, probably 30 or 40 feet below the surface. It was cut by a tunnel.

X 9. Were there any lodes or veins in rock in place cropping out on the surface within the said placer claims to your knowledge?

Ans. No, sir; not to my knowledge.

(S'g'd) WILLIAM B. RAGLAND.

Subscribed and sworn to this 7th day of March, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

Adjourned to 8th inst. at 9.30 a. m.

March 8, 1884, 9.30 a. m., resumed.

And thereupon ROBERT BERRY, a witness of lawful age, produced on the part of said complainant, being by me first duly cautioned and sworn, on oath testified as follows in response to interrogatories to him propounded by A. W. BRAZEE, esquire, attorney for the said complainant:

167 Int. 1. State your name, age, residence, and occupation.

Ans. My name is Robert Berry, age 50 years, residence Leadville, Colorado, and I am especial agent of the United States General Land Office at present, though I am a miner by occupation usually.

2. Do you know James A. Sawyer, defendant?

Ans. I do.

3. Did he ever make any statement to you in respect to the names of the locators of the Fanchon and Stinson placer claims, in whose employ they were at the time of location, the cutting and hauling of the timber from those claims, the arrangement made between him, Sawyer, and William H. Stevens and Levi Z. Leiter in respect to the location of said placers, the disposition of the lode claims which he, Sawyer, with others had located thereon? If anything, state the same fully and at large.

Ans. He did. He said the men whose names were used in the location of those placers were all employed by Stevens and Leiter at the time; that he had visited William H. Stevens and Levi Z. Leiter at the iron mine on Iron Hill to endeavor to sell them an interest he owned in the Kayservim claim on Iron Hill, to enable him to pay the expense of his prospecting on what is now the Fanchon and Stinson placer, and in his conversation with them he told them what he had located, and if he could find no mineral to pay he thought he could get his money back out of the timber; that afterwards, W. H. Stevens accompanied him to see the prospect, and after looking it over, Mr. Stevens suggested that he should abandon the lode

168 claims that he had located on that land and locate it as placer land, and that he, Wm. H. Stevens and Levi Z. Leiter, would furnish the money to pay all expenses, and that he, Sawyer, should have the lode claims and they would have the balance; that afterwards they employed him, Sawyer, to look after the timber on the land to prevent others from cutting it and carrying it away; that they, Stevens and Leiter, cut and carried to the iron mine a good portion of the largest sized timber; that they, Stevens and Leiter, paid him, Sawyer, what Stevens called a grub stake, $3 a day for his services. He also told me that there was no water ditch on the land and no effort had been made to build one for placer mining; that all the placer mining ever done upon the land was very limited, and not enough to make it pay.

4. How long have you been engaged in mining and in what branches in Lake County, Colorado, and the country adjoining?

Ans. For more than twenty years; both placer and lode mining, principally placer mining.

5. When did you first know the ground of the present Fanchon and Stinson claims so as to become acquainted with the indications on the surface of lodes, leads, veins, and mineral in place thereon, and state what such indications were when you first knew that country?

Ans. I have known the land for twenty years, and been over it frequently twenty years ago, but never paid any particular attention to the indications

on that land for lode claims. I did considerable prospecting about
169 18 years ago on the adjacent land for lode mining, but I don't think I ever prospected on that particular land.

6. State whether you examined or went over the Fanchon and Stinson ground within the last three years with a view to discovering evidences, if any thereon, of lodes or leads carrying mineral of any sort, and, if so, when, what indications, if any, you saw upon the surface of such lodes, leads, or veins, and how conspicuous they were to and passing over the ground.

Ans. I did, in October, 1882, examine the ground. I found a number of lodes located on the ground. In places there were blow-outs of quartz, that is indications of mineral. I have been over the ground a number of times since that and seen mineral taken from lodes.

7. What sort of timber, if any, was growing on the ground of the Fanchon and Stinson before the location of those claims in November, 1879; what was the character of the growth of this timber in respect to its quality?

Ans. It was covered with a very heavy growth of spruce and white pine, principally spruce; some of it quite a large growth and the majority of it not so large, but well adapted, however, to mining purposes.

8. Did you make any examination in October, 1882, for evidences of placer mining work down on the Fanchon and Stinson claims; if so, what did you discover of such indications, the extent or apparent extent of the workings, and value thereof?

(Objected to as immaterial, because any work done or not done
170 after the applications for patent cannot affect the legal rights of this case.)

Ans. I did examine it; I found no evidence of any placer work ever having been done on the Stinson placer, and a very trifling amount on the Fanchon; not to the amount of $100; it looked as if there had been a little digging or prospecting at the east end of the Fanchon, at the head of Buffalo Gulch, near a spring.

9. I show you Exhibit A^2, connected plat, on which there appears to be a line marked Buffalo. Who made that line? And, if you did, state what it represents.

Ans. I made that line myself, and it represents about the direction of the channel of Buffalo Gulch from the head down a portion of the way.

10. At the westerly end of this line marked Buffalo there is a star, or something like a chestnut burr. What does that represent, if anything?

Ans. That is intended to represent a spring; I can't say whether it is located exactly on the map or not.

11. How far is it from that spring up to the Sawyer cabin, so called?

Ans. I should judge 800 to 1,000 feet.

12. Now, from the spring up, going in a westerly direction, does Buffalo Gulch flatten out so as to become a mere depression or sag on the mountain side?

Ans. A short distance above the spring; from that on up there is no channel at all, just a sag or wide flat.

(Question and answer objected to as immaterial and irrelevant.)

171 13. Does the line marked "Buffalo" on the plat cross the line of the Fanchon between posts 2 & 3 about when the channel crosses that line on the ground between those posts?

Ans. I should think it did, as near as I can remember.

14. Where were the evidences of placer working which you saw on or about October, 1882, with reference to the line between posts 2 and 3?

Ans. Just above this east line.

15. You said this work does not exceed in value $100. What in your opinion was its real value, and how recently did it then appear to have been made or done?

Ans. I don't think there had been more than one day's work done. I thought it had been done in the summer of 1882.

16. At about what angle does the mountain side rise from the bottom of the gulch on the north side, and at about what angle on the south side?

Ans. From the bottom of the gulch, about 100 feet wide, the hill commences on the north side and rises not very abruptly, perhaps 20° at the upper end. At the lower end of the Stinson it is more abrupt. On the south the hill does not rise very high nor very abrupt. Some 10° or 12° perhaps.

(Question and answer objected to because the lay of the ground, the steepness of the hills, the flatness of the gulches can in no way affect the legal rights of the parties.)

17. How near to the bottom of the gulch is the southerly line
172 of the Stinson between posts 2 and 7 on the plat, and about how high above the bottom of the gulch is that line?

Ans. I should think corner 7 was 300 feet from the bottom of the gulch and I should say 100 feet above it. I don't think the line comes within 100 feet of the bottom of the gulch at any place.

18. Can water be taken from the spring mentioned by a ditch or conduit onto any part of the Stinson placer.

Ans. Yes; I think it could onto the lower end, in the neighborhood of cor. 8; that is, if there is any water to take.

(Question and answer objected to as irrelevant and immaterial.)

19. What is the sole source of supply of water for placer mining on these claims?

(Objected to as immaterial and irrelevant.)

Ans. In the spring of the year the melting of the snows; after that two springs of small capacity. There is a little water flows from the lower spring. I don't know whether any flows from the upper one or not.

20. State from your knowledge of the country whether there is much or little water from melting snows in the spring in the channel of the gulch.

Ans. In the early summer there is considerable.

(Question and answer objected to as immaterial and irrelevant.

21. Is there considerable on these placers at that time of the year?
173 Ans. Yes; on the Fanchon there is a good deal of water for a short time, but none on the Stinson.

22. In what sort of formation is placer gold found, whether as gravel of beds of old streams or in drift or slide?

Ans. Usually it is found here in the gravel or wash of beds of old streams.

23. When have you principally done placer mining in years gone by in the neighborhood of Buffalo Gulch?

Ans. In Colorado Gulch, about 2 miles south of Buffalo Gulch, for the last twenty years, more or less.

24. In what formation is placer gold found then?

Ans. Entirely in the wash, mixed with the gravel.

(Objected to as irrelevant and immaterial.)

25. Where is Buffalo Gulch and Colorado Gulch with reference to Mt. Massive?

(Objected to because the location or situation of Mt. Massive in Colorado Gulch can have no bearing on the rights of the parties.)

Ans. In what I suppose would be called the foot hills of Mt. Massive, between the mt. and the Arkansas River, on the east of the mountain.

26. What is the name of the mountain or spur which runs from the bottom of the gulch on the north?

(Objected to because it makes no difference where this mountain rises or falls.

Ans. It is all called Sugar Loaf on both sides of the gulch.

174 27. What other gulches besides Colorado and Buffalo coming out of the easterly side of the foot hills of Mt. Massive have you prospected or observed, in respect of placer mining thereon?

(Objected to as irrelevant and immaterial.)

Ans. On Sugar Loaf Gulch, between Colorado and Buffalo Gulch, has been some placer mining done. No other that I know of.

28. Where is pay found in these gulches with reference to their heads?

Ans. In Sugar Loaf Gulch all the mining was done near its mouth where it empties into the Arkansas. In Frying Pan Gulch a branch of Colorado Gulch pay was found to its head. Colorado Gulch paid from the mouth of Frying Pan down about half a mile to the west branch of the Arkansas River. I never knew that Buffalo paid to work anywhere.

29. Where, if on either Fanchon or Stinson placer, are gravel beds or gravel beds mixed with wash found, if at all, and to what extent?

Ans. I don't think there are any gravel beds on the Stinson. On the east end of the Fanchon there is some gravel in the head of Buffalo Gulch. How extensive it is I have no means to determine. So far as known it is very limited.

30. In your opinion, judging from your experience, your observation in the country in and around Buffalo Gulch, are the Stinson and Fanchon placer claims, so called, of any value as placer mining ground, or was the ground included within them or any part of it ever of any

175 value as placer mining ground?

(Objected to as irrelevant and immaterial.)

Ans. I don't believe it has any value as placer mining ground or ever had.

31. What is the character and depth of the material covering rock in place on these placers, so called, particularly on the side hill?

Ans. It varies in depth. In some places the solid formation comes to the surface, at others there is a debris of several feet in thickness, composed of detritus or decomposition of rocks and vegetable matter.

32. In all your experience in placer mining did you ever see such material as covers the hill sides yield placer gold in paying quantities?

(Objected to as immaterial and irrelevant.)

Ans. I never did.

33. Is it an uncommon thing to find particles of gold or colors almost anywhere in this country near rock in place?

Ans. No; it is very common.

34. State your opinion in respect to whether the ground of the Fanchon and Stinson alleged placers is valuable for the veins, lodes, or leads carrying precious metals or ores thereof within their bounderies and the extent or proximate value of that district embraced within them as compared with other lode mining districts in the vicinity of Leadville.

(Objected to as irrelevant and immaterial.)

Adjourned to 2 o'clock p. m.

2 o'clock p. m., resumed.

176 Ans. I do regard it as valuable for lode mining. Judging from the developments already on the ground and those on the land immediately adjoining, I regard it as one of the best districts in the county for fissure-vein mining.

And thereupon, on cross-examination, said witness BERRY further testified as follows:

Cross 1. When you say you regard the district in which these placer claims are situated as one of the most valuable in the county, you do not mean that there are any valuable lode deposits or veins discovered or developed within these placer claims, do you?

Ans. Yes. I know of one vein discovered in the placers that I regard as a very valuable prospect. It is the Amazon.

X 2. Was this vein or lode discovered or located before the applications were made for the placer patents?

Ans. It was discovered since; I think in the fall of 1882.

X 3. Is this the only discovery of a lode or vein of any particular value, in your opinion, discovered in the limits of these placers?

Ans. There are two others, the Advance and the Horseshoe.

X 4. Where were these discovered and located?

Ans. All were discovered since the application for the placer patents. The Gunnison mine, one of the best mines in the camp, is about 250 feet of the north end of it covered by the Fanchon placer. That was
177 discovered in 1879, I think; in May.

X 5. Did you ever prospect over any considerable portion of these placer claims by panning dirt or otherwise to determine the quality of placer gold that might be found therein?

Ans. I never did.

X 6. There is wash and gravel over a large portion of the ground on these placers and in the vicinity of them, is there not?

Ans. There is, in the vicinity. I don't think there is any large quantity on the placers.

X 7. You know of no discovery shafts or other underground workings in which valuable deposits of metal-bearing rock in place had been found or discovered before the application for patents in full in 1879?

Ans. Not of my own personal knowledge.

(S'g'd) ROBERT BERRY.

Subscribed and sworn to this 8th day of March, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

By consent of counsel the further taking of testimony herein is adjourned until further notice.

Pursuant to the stipulation hereunto attached, dated April 9th, A. D. 1884, I was on this 21st day of April, A. D. 1884, at ten o'clock in the forenoon, at the city of Leadville, Colorado, attended by A. W. Brazee, esq., United States district attorney, as solicitor for said complainant,
178 and by G. G. Symes, esq., solicitor for said respondents, and thereupon counsel for complainants introduce in evidence quitclaim deed dated August 6th, A. D. 1881, from James A. Sawyer to H. Heil, E. Hoelke, and others, which is marked Exhibit R and hereunto attached.

(Defendant objects to the said Exhibit R as immaterial and irrelevant.)

Complainants' counsel also offers in evidence certified copy of location certificate of the Juniata lode, dated Sept. 19th, A. D. 1879, which is hereto attached and marked Exhibit S.

(Defendant objects to Exhibit S as immaterial and irrelevant.)

Complainants' counsel also offers in evidence certified copy of the location certificate of the Tidal Wave lode, dated September 5, 1879, which is hereto attached and marked Exhibit T.

(Defendant objects as last above.)

Adjourned to 2 o'clock p. m.

2 p. m. Resumed.

And thereupon WALDEMA ARENS, a witness of lawful age produced on the part of said complainants, being by me first duly cautioned and sworn, on oath testified as follows in response to interrogatories to him propounded by A. W. BRAZEE, esq., solicitor for said complainants:

Int. 1. State your name, residence, and occupation.

Ans. My name is Waldemar Arens; residence at the Iron Mine, near Leadville, Colorado; occupation, financial agent of the Iron Silver Mining Company.

179 2. How long have you been engaged in mining, and where and in what branches?

Ans. A year since 1878; at the Iron Mine.

3. What capacities have you been engaged in at the Iron Mine during the last six years?

Ans. As financial agent, principally, and part of the time as manager.

4. Do you know William H. Stevens, Levi Z. Leiter, and James A. Sawyer? If so, state how long you have known them, respectively.

Ans. I have known William H. Stevens since 1856 or 1857, Levi Z. Leiter since 1878, James A. Sawyer since 1878 or 1879, I forget which, though I think 1878.

5. In whose employ were you when you first went to work on the Iron Mine referred to?

Ans. In Stevens & Leiter's.

6. When?

Ans. In 1878.

7. Who was in possession, if any one, claiming to be the owner of the Iron Mine at that time?

Ans. Stevens & Leiter.

8. What other properties were they in possession of which they operated in connection with the Iron Mine, if any?

Ans. The Rock and the Lime mines, and also the Stone, also on the Iron Hat and Bull's Eye.

9. Do you know the Iron Silver Mining Company, and how long have you known it?

Ans. I do, and have known it since it was organized, in March, 1880.

180 10. Since that time, March, 1880, has it been in possession of the properties referred to by you, claiming them and operating them as owners?

Ans. It has.

11. What official positions, if any, have Messrs. Stevens and Leiter respectively held in the Iron Silver Mining Company?

Ans. Directors.

12. What positions, if any, did they respectively hold in said company at its organization?

Ans. They were the main owners, I presume, and they became directors.

13. I show you certified copies of the location certificates of the Fanchon and Stinson placer mining claims, respectively, and ask you if you are the W. Arens mentioned in those papers respectively?

Ans. I am.

14. Were the persons named of the locators in those certificates in the employ of Stevens and Leiter at the time they purport to have been executed?

Ans. I don't know whether Rames was or not. I was. Sawyer was not. I don't think Rames was. All the others were. I am not certain that L. Rucker was in their employ exactly at the time the certificates were executed.

15. Do you know by what person and by what authority your name was used as a locator in the said certificates of location on these placer claims? If so, state fully.

Ans. I can't say that it was by Sawyer and Stevens together, or by either one of them. I think likely by both of them. They had authority from me to so use my name.

181 16. Was such authority verbal or written?

Ans. Verbal.

17. Did you in fact sign the location certificates in person and by your own hand?

Ans. I cannot recollect. I have no doubt I did.

18. Look at Exhibit P, and state whether you executed and acknowledged the original of which it is a copy.

Ans. I recollect deeding it to Sawyer, and presume that was the deed I signed and acknowledged.

19. Did you ever in person do any work on either the Stinson or Fanchon placer claims or contribute any money for the expense of locating or working the same?

Ans. (Objected to as immaterial and irrelevant, because a mining claim is not required to be located by work personally done by the locator.)

Ans. I did not do any work. I paid money through the office for the work done there.

20. Was that your money or the company's money?

Ans. The company's money, or rather Stevens & Leiter's money.

21. Are you in the employ of the Iron Silver Mining Company now?

Ans. I am.

And thereupon, on cross-examination, said witness ARENS further testified as follows:

Cross 1. Your name was used by Sawyer in locating these claims by your consent?

Ans. Yes, sir.

X 2. After the locations had been perfected you joined in a
182 deed to Sawyer for the amount of the placer claim located in your name?

Ans. I did.

X 3. Sawyer used your name as locator for 20 acres of the ground because it was supposed to be necessary in locating placer ground to have one locator to each 20 acres of ground?

Ans. Yes, sir.

X 4. The deeds of you and other locators whose names had been used to perfect the location title to said placer ground were made to convey and consolidate the title to the whole tract in Sawyer, who had done the work on the claims?

(Complainant objects to the last part of the question, because it assumes that Sawyer had done the work on the claims.)

Ans. They were.

X 5. Was not this land represented to you by Sawyer and others to be placer mining ground before you authorized Sawyer to use your name as one of the locators for the purpose of obtaining pre-emption title to said placer ground?

(Objected to as not cross-examination and as calling for mere hearsay.)

Ans. It was.

Redirect 1. From what you have stated on cross-examination I infer that you did not at the time you authorized Mr. Sawyer to use your name in said location certificates expect jointly with the other locators or in any way to work those claims as placer mines yourself. Am I right in this inference?

183 (Objected to because not proper redirect examination, and because counsel asks as to the correctness of his inferences.)

Ans. You are right.

(S'g'd)

WALDEMAR ARENS.

Subscribed and sworn to this 21st day of April, A. D. 1884, before me.

(S'g'd)

ROBERT H. BUCK,
Examiner.

And thereupon PERCIVAL HENDERSON, a witness of lawful age, produced on the part of said complainant, being by me first duly cautioned and sworn on oath, testified as follows in response to interrogatories to him propounded by A. W. Brazee, esq., solicitor for said complainant:

Int. 1. State your name, residence, and occupation.

Ans. My name is Percival Henderson; residence at the Iron mine; occupation, clerk.

2. How long have you been engaged in mining, and where and in what branches?

Ans. Since 1879, at the Iron mine, as clerk, book-keeper, accountant, &c.; in clerical duties.

3. Who were the owners of the Iron mine and the properties operated in connection therewith when you went there to work?

Ans. Stevens & Leiter, I believe.

4. Who succeeded them as owners of those properties, and when?

Ans. The Iron Silver Mining Company; in March, 1880.

5. What official positions, if any, have Messrs. Stevens and Leiter, respectively, held in the Iron Silver Mining Company at the time and since its organization?

184 Ans. William H. Stevens has been a director and Mr. Leiter also. They were directors at the time of the company's organization.

6. I show you location certificates on the Stinson and Fanchon placers and ask you if you are the P. Henderson mentioned therein?

Ans. I am.

7. Were the persons named as locators in those certificates in the employ of Stevens & Leiter at the time the certificates purport to have been made?

Ans. I don't remember as to Sawyer, Raines, and Lou Rucker. The rest of them were.

8. Do you know by what persons and by what authority your name was used as a locator in said certificate?

Ans. I do not.

9. Did you, in fact, sign these location certificates in your own person, by your own hand.

Ans. I don't remember.

10. Please look at Exhibit P and say whether you signed and acknowledged the original of that exhibit.

Ans. I executed a deed. I suppose that is a copy of it.

11. Did you ever in person do any work on the Stinson and Fanchon placer claims, or either of them, or contribute any money of your own for the expense of locating or working the same?

(Objected to as immaterial and irrelevant, because a mining claim is not required to be located by work personally done by the locator.)

185 Ans. No.

12. Did you ever intend to work or be interested in working the Stinson and Fanchon claims, or either of them, as placers?

Ans. No.

13. Are you in the employ of the Iron Silver Mining Company now?

Ans. I am.

And thereupon on cross-examination the said witness HENDERSON further testified as follows, in response to cross-interrogatories to him propounded by G. G. Symes, esq., solicitor for said respondents:

Cross Int. 1. Was not your name used by Sawyer as one of the locators of the Fanchon and Placer claims by your authority and consent?

Ans. I don't remember, but I satisfied it afterwards and joined in the deed to Sawyer.

X 2. The joining of you and others in the location of these placer claims was because it was supposed there had to be one locator to every

20 acres of placer ground included in the location? This was to acquire the pre-emption title legally to the whole tract. Is that so?

Ans. I believe it is. We dismissed it at the time.

X 3. The work upon these claims for the purpose of appropriation and acquiring the possessory title was done and performed by Sawyer, was it not?

(Objected to as not cross-examination and assumes the work was done.)

Ans. It was.

186 And thereupon, on redirect examination, said witness HENDERSON further testified as follows:

Redirect 1. Have you any personal knowledge of any work done by Sawyer on these claims or either of them?

Ans. Yes; I saw some pits he was digging over them, and I have paid him money for the work right along ever since he has been over there.

Redirect 2. Whose money was it that has been so paid to Mr. Sawyer?

Ans. The Iron Silver Mining Company.

Redirect 3. Do you know of your own personal knowledge of any work done by Mr. Sawyer or under his direction, as lode claims or either of them, before April, 1880? And, if so, state when and where the work was done.

Ans. I was over there once; I don't remember whether it was in the fall of 1879 or the spring of 1880. He had a cabin and was living there working round, but I couldn't locate the places on the map, nor tell just where they were.

Redirect 4. Was this work you refer to placer mining work?

Ans. I don't know whether it was or not. I saw him digging pits. I don't know what he was going to do with them.

(S'g'd)

PERCIVAL HENDERSON.

Subscribed and sworn to this 21st day of April, A. D. 1884. Before me.

(S'g'd)

ROBERT H. BUCK,
Examiner.

187 (Complainant offers in evidence certified copy of location certificate on the Michigan Boy lode, dated Oct. 15, 1879, which is hereto attached, marked Exhibit U.)

(Defendant objects to Exhibit U as irrelevant and immaterial.)

Adjourned to April 22, A. D. 1884, at 10 a. m.

APRIL 22, A. D. 1884—10 a. m.

Resumed.

And thereupon JOHN H. HERON, a witness of lawful age, produced on the part of said complainants, being by me first duly cautioned and sworn, on oath testified as follows, in response to interrogatories to him propounded by A. W. Brazee, esq., solicitor for and on behalf of said complainants:

Int. 1. State your name, residence, and occupation.

Ans. My name is John H. Heron; residence, Leadville, Colorado; occupation, physician.

Int. 2. I call your attention to protest of Ernest Hoelke, in Exhibit C, and to an affidavit of Dr. J. H. Heron at the end of said protest in said exhibit, and ask you if you are the Dr. Heron therein mentioned?

Ans. I believe so.

3. I call your attention to Exhibit S, certified copy of location certificate on the Juniata lode, and ask you if you are the John H. Heron mentioned in that document?

Ans. I am the man, I think.

4. What personal knowledge have you of the time of discovery of said Juniata lode, the extent in width of the vein, the vein matter, wall
188 rock, character in quality and quantity of the ore if any found therein? State fully.

Ans. In or about the year 1879, I think in the summer, we started a drift and ran in about 175 feet, to strike what we supposed would be the break of the hill then, and the last ten or fifteen feet we struck a very solid formation, some few pockets with traces here and there of pyrites of iron. We broke through that solid formation and opened into pyrites of iron very soft, down through that, I think about 15 feet in width, all a body of mineral, carrying silver, pyrites of iron, and a little lead. Our assays at that time ran 5, 10, 15, and 80 ounces silver. I let a contract for 50 feet paral'el with the vein. We took no assays on that contract, but after drifting about 10 or 15 feet on that cont'act we still continued the balance of the contract on vein matter, which was oxide of iron in honey-comb shape. I do not remember, but think we got some assays on that for gold. The following week after that contract was complete, if I remember right, we were about to let another contract or to make some arrangement to continue on the vein into the hill. The mineral above us, which stood very nearly perpendicular, broke the timbers. One man wheeled out nothing but mineral for two weeks. It was very loose, mostly shovelling. I at that time stopped the work, not knowing when that cave was going to stop, ordered a bulkhead put in at the face of the vein. That caving continued until it broke through from the surface above, which was somewhere about 175 feet above the drift. I ordered the men to come back fifteen feet or 20 and run a sharp incline to
189 cut the vein, which I suppose was perpendicular. Did not cut the vein at the bottom of the incline at the extent of that contract. I let another for 14 feet directly into the hill. We opened up the vein about 12 feet, dipping into the hill. The vein changed its course, dipping directly into the hill. The first two feet in the vein a large wave of water came into the incline. I left about that time. The wall rock of the vein was very hard material, some of it quartzite, principally flint on our side. On the other it had all the appearance of granite, very hard, and perfectly smooth, remarkably smooth. The walls were about 15 feet apart, as near as I can tell. We did other work on that vein that year; we let a contract for 50 feet. We had three men hauling out mineral that was caving in from above for about 2 weeks, and they didn't seem to make much headway.

5. Did you have any mill-runs on that in that year? If so, state with what result.

Ans. We did not.

6. I show you Exhibit A2, connected plat of the Fanchon and Stinson;

also Exibit A, certified copy of patent and plat, calling your attention to the plat of the Stinson; also Exhibit B, a certified copy of patent and plat of the Fanchon, and ask you to state whether you knew the ground of these two placers in 1879, and to what extent you had travelled over or across it.

(Objected to as irrelevant and immaterial. All the questions and answers to this witness objected to as irrelevant and immaterial,
190 because he has not shown that there was any discovery of any vein, lode, ledge, or mineral deposit in place made within the boundaries of said Juniata lode claim within the exterior boundaries of the said placer claims, or either of them.)

Ans. I don't remember the Stinson placer; I didn't go up the gulch. I crossed over from Soda Springs, up over the mountain, to reach the Juniata ground. I don't remember how often. Think I went 6 or 8 times up Lake Creek to reach the Juniata ground, which is on the opposite side of the mountain. I might have crossed the Fanchon ground—the western portion of—15 or 20 times.

7. What indication of lode claims, or lode, leads, veins, ledges of mineral bearing gold, silver, or other metals in rock in place, were apparent upon the surface of the Fanchon ground passed over by you in 1879? If any, describe the same fully.

Ans. I found considerable float—several large pieces of float—one piece containing about six dollars in gold to the ton. I broke it off from a large boulder. Besides the gold it contained about three ounces of silver. I broke off another piece from another smaller boulder. It ran more silver than gold. I think about ten ounces silver. That was near about the break of that hill.

8. How extensively was float-rock, indicating that it was broken from ledges, diffused over the Fanchon placer ground when you were there in 1879?

Ans. I think I saw one or two places there; I don't remember.

191 9. State whether the wash was deep or how otherwise on the Fanchon placer ground.

Ans. I found two holes. I know one was on the Fanchon placer. I think it was about ten feet deep, through broken-up boulders and soil and loose rock stained with iron. There was no wash there; only gravel. I suppose you call gravel wash.

10. How near to the Fanchon placer ground was the work which you have described on the Juniata lode done in 1879?

Ans. I couldn't tell.

11. Can you state whether it was inside the outboundaries of the Fanchon or exterior thereto?

Ans. I think it was outside.

And thereupon, on cross-examination, said witness HERON further testified as follows, in response to cross-interrogatories to him propounded by G. G. Symes, esq., solicitor for said respondents:

Cross-int. 1. You state that the work you have described as having been done on the Juniata lode claim was done outside of the said placer claims?

Ans. To the best of my knowledge, I believe it was.

X 2. But when you surveyed and located the Juniata lode claim you surveyed a portion of it on the Fanchon placer claim, or extended it over the exterior boundaries of the claim?

(Objected to because it assumes the Fanchon placer was located first.)

192 I believe we did if there was a placer claim there at that time. I was not aware of any, but we found one there when we applied for our patent.

X 3. You have not discovered or found any mineral or metal bearing rock in place in any portion of any vein, or lode, or deposit in place within the exterior boundaries of said placer claim?

Ans. I believe we have, right in the line. I believe our vein strikes the line exactly. I believe our works extend about to the line. I would like to ask a question.

X 4. You say you found float ore carrying gold on the ground included in the Fanchon placer, or very near the line. Is it not common and do miners not expect to always find float rock carrying gold upon and in the vicinity of placer ground?

Ans. Yes, sir.

X 5. Then finding this float rock carrying gold is an indication that where it was found or in the immediate vicinity there is placer mining ground or ground containing placer gold?

Ans. Yes, sir.

X 6. You say you saw in a prospect hole on the ground broken up boulders and dirt. Is not placer gold often found in such a superficial formation?

Ans. No, sir.

X 7. What experience have you had in placer mining?

Ans. I have been in the mountains about six years.

X 8. How much have you prospected for or carried on placer mines?

Ans. About the two first years. I spent about $1,500 a year at it.

193 X 9. Is not placer gold often found near the surface among the boulders and earth and soil commonly called dirt?

Ans. No, sir; it is not found in what I should call dirt, without you would find a little flow gold, which you can find almost any place in the mountains.

X 10. You have not found or seen within the exterior boundaries of said placer claims any discovered vein or lode of rock in place carrying gold, silver, or other valuable deposits?

Ans. Not to my knowledge.

And thereupon, on redirect examination, said witness HERON further testified as follows:

Redirect 1. Did you at any time in 1879 see any placer work going on, or any indication of any having been done, on these placer claims or either of them?

Ans. No, sir.

And thereupon, on second cross-examination, said witness HERON further testified as follows:

Recross 1. What do you call placer work?

Ans. Any work by which dirt or gravel is washed or goes through water for the purpose of extracting gold.

Re X 2. Is not running open cuts, sinking pit holes, when the object is to search for placer gold, called placer working?

Ans. Yes, sir; if driven into the hillside where there is a bed of gravel in front of you and a bed rock to work on.

Re X 3. Suppose these cuts and pit holes are sunk at the bottom
194 of the gulch for the purpose of ascertaining the richness of the earth, would not that be placer work or prospecting for placer mines?

Ans. It would be prospecting, but not placer mining.

And thereupon, on second redirect examination, said witness HERON further testified as follows:

2d redirect 1. What source of supply of water was there for placer mining at the pit you refer to, if any?

Ans. Not any on that ground that I have walked over, and I don't believe there is any on the mountain, unless they melt snow.

(S'g'd) JOHN H. HERON.

Subscribed and sworn to this 22d day of April, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

And thereupon, no further witnesses being produced on the part of said complainant, the taking of the testimony-in-chief on the part of said complainants was closed.

(*Complainant's rebuttal.*)

And on this 23 day of April, A. D. 1884, I was attended by Andrew W. Brazee, esq., solicitor for said complainant, and by G. G. Symes, esq., solicitor for said respondents, and thereupon the said witness ROBERT BERRY, being recalled, testified as follows in rebuttal on the part of said complainant, in response to interrogatories to him propounded by A. W. BRAZEE, Esq., solicitor for said complainant:

195 Int. 1. Have you been over the ground between the placers in question and the head of Lake Creek, and observed the lay of the ground between those points, so as to form an opinion of the distance which it would be necessary for a ditch to traverse taking water from the head of Lake Creek at such a point as to carry water on to the so-called placer ground in question? If so, state such distance according to your estimate.

(Objected to as irrelevant and immaterial.)

Ans. I have. I estimate that the ditch could not be brought in at a less distance than five miles.

(S'g'd) ROBERT BERRY.

Subscribed and sworn to this 23 day of April, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

It is stipulated by the counsel present that the taking of testimony herein is closed, except that the defendants, if so advised, may send a

commission to Detroit, Michigan, to take the testimony of William H. Stevens, and sue out a dedimus potestatem or commission on or before the 3d day of May, A. D. 1884, for that purpose, such testimony to be taken upon interrogatories and cross-interrogatories attached to such commission, and the complainants, if so advised, may take testimony in rebuttal of said Stevens, evidence within ten days after the opening of and publication of his deposition.

(S'g'd) ROBERT H. BUCK,
Examiner.

Dated LEADVILLE, *April* 23, 1884.

196 I, the above-named Robert H. Buck, do hereby certify that before the examination of the said deposing witnesses, David B. Stiteler, Charles Clary, Austin J. Kavanagh, Albert M. Pennock, John F. Lewis, Louis Portman, William M. Gaar, Josiah A. Eade, Ernest Hoelke, David G. Miller, Louis K. Rucker, William B. Ragland, Robert Berry, Waldemar Arens, Percival Henderson, and John H. Heron, they, the said witnesses, were and each of them was by me severally duly cautioned and sworn; that said deposition' were taken by me at my office in the city of Leadville, in the State and district of Colorado, beginning on the 20th day of February, A. D. 1884, at ten o'clock in the forenoon and thence continuing on the 21st and 22d of said February, and thence continuing by consent of counsel on the sixth and seventh days of March, and the 21st and 22d days of April, A. D. 1884; that the testimony of the said deposing witnesses and of each of them was by me reduced to writing, and that after the same were so reduced to writing by me, they were read over by me to the said respective deponents, or by consent of counsel were read over by the said respective deponents themselves, and that thereupon the same were signed and sworn to by the said deponents, respectively, before me and in the presence of counsel, at the place and on the days aforesaid; that the parties to said cause were, by their respective counsel Andrew W. Brazee, esq., on the part of the complainant, and G. G. Symes, esq., or J. F. Freuaff, esq., on the part of the respondents, present during the whole time of the taking of said testimony.

197 And I do hereby further certify that I am a duly appointed and qualified examiner in chancery of the circuit court of the United States for the eighth judicial circuit within and for the district of Colorado, and that I am not of counsel to either of the parties to said cause nor interested in the event thereof.

And I do hereby further certify that of the several exhibits mentioned in the foregoing depositions Exhibits A, B, C, and D, are not attached hereto for the reason that they are too bulky to be conveniently attached, but they are transmitted herewith and Exhibits E to U, inclusive, and Exhibit A^2 are hereto attached.

Witness my hand at said Leadville this 25th day of April, A. D. 1884.

(S'g'd) ROBERT H. BUCK,
Examiner in Chancery.

198 EXHIBIT A.

[H. F. C.—D. K. S.]

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 24, 1883.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of U. S. mineral patent No. 4756, for the claim of James A. Sawyer upon the Stinson Placer, Leadville, Colorado, land district, is a true and literal exemplification from the records of this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal U. S. General Land Office.] N. C. MCFARLAND,
Commissioner of General Land Office.

THE UNITED STATES OF AMERICA.

General Land Office. No. 4756.] [Mineral certificate. No. 285.

To all to whom these presents shall come, greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the placer mining claim of James A. Sawyer, accompa-
199 nied by the certificate of the register of the land office at Leadville, in the State of Colorado, whereby it appears that, in pursuance of the said Revised Statutes of the United States, the said James A. Sawyer did, on the twenty-seventh day of April, A. D. 1880, enter and pay for said mining claim or premises, being mineral entyr No. 285 in the series of said office, designated by the surveyor-general as lot No. 661, embracing a portion of the unsurveyed public domain in the California mining district, in the county of Lake and State of Colorado, in the district of lands subject to sale at Leadville, containing one hundred and twenty-four (124) acres and twenty-five hundredths ($\frac{25}{100}$) of an acre of land, more or less, and, according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at fifteen (15) degrees east, to wit:

Beginning a' corner No. 1, a pine post four (4) inches square, marked "1 x 661" and "1 x 660," being corner No. 1 of survey No. 660 made for the Fanchon Placer mine, from whence the southwest corner of section eighteen (18), in township nine (9) south of range eighty (80) west of the sixth principal meridian, bears south one (1) degree thirty-five (35) minutes and six (6) seconds west at the distance of sixteen hundred and eighty-eight and two tenths (1,688 2-10) feet, a log cabin bears north forty-nine (49) degrees thirty-five (35) minutes east at the distance of one hundred and forty-five (145) feet, a shaft bears north twenty-two (22) degrees forty-five (45) minutes east at the distance of two hundred and forty-seven (247) feet, and a pit bears north eighty-seven (87) degrees ten (10) minutes east at the distance of three hundred and sixty-eight (368) feet; thence from said cor-

ner No. 1 north seventy-five (75) degrees fifty-five (55) minutes
200 west twelve hundred and ninety-five and seven-tenths (1,295 7-10) feet, to corner No. 2, a pine post four (4) inches square, marked "2 x 661" and "7 x 660," being also corner No. 1 of said survey No. 660, from which a pine tree, eight (8) inches in diameter, blazed and marked "B. T. 2 x 661" and "7 x 660," bears south forty-three (43) degrees forty-five (45) minutes west at the distance of six and five-tenths (6 5-10) feet, and a pine tree ten (10) inches in diameter, blazed and marked "B. T. 2 x 661" and "7 x 660," bears south sixty-two (62) degrees east at the distance of twelve and three-tenths (12 3-10) feet; thence from said corner No. 2 north five (5) degrees east six hundred and sixty-five (665) feet to corner No. 3, a pine post four (4) inches square, marked "3 x 661," from which a pine tree fourteen (14) inches in diameter, blazed and marked "B. T. 3 x 661," bears north thirty-four (34) degrees forty-two (42) minutes east at the distance of eleven and eight-tenths (11 8-10) feet, and a pine tree twelve (12) inches in diameter, blazed and marked "B. T. 3 x 661," bears south sixty-four (64) degrees four (4) minutes west, at the distance of sixteen and eight-tenths (16 8-10) feet; thence from said corner No. 3, north seventy (70) degrees (10) minutes east nineteen hundred and ten (1,910) feet to corner No. 4, a pine post four (4) inches square, marked "4 x 661" from which a pine tree sixteen (16) inches in diameter, blazed and marked "B. T. 4 x 661," bears south twenty-nine (29) degrees forty-five (45) minutes west, at the distance of two and three-tenths (2 3-10) feet, and a pine tree twelve (12) inches in diameter, blazed and marked "B. T. 4 x 661" bears north sixty-three (63) degrees thirty (30) minutes east, at the distance of six and five-tenth (6 5-10) feet; thence from said
corner No. 4 south seventy-five (75) degrees east ten hundred and
201 forty-six and two-tenths (1,046 3-10) feet to corner No. 5, a pine post four (4) inches square, marked "5 x 661," thence south thirty-two (32) degrees forty-nine (49) minutes east ten hundred and twenty-five and eight-tenths (1,025 8-10) feet to a point on northerly boundary of the Tidal Wave lode, from which the northwesterly corner of said Tidal Wave lode bears south forty-nine (49) degrees thirty-one (31) minutes west at the distance of eight hundred and twenty and two tenths (820 2-10) feet, thirteen hundred and twenty-eight and five-tenths (1,328 5-10) feet to a point on southerly boundary of said Tidal Wave lode, from which the southwesterly corner of said Tidal Wave lode bears south forty-nine (49) degrees thirty-one (31) minutes west at the distance of seven hundred and seventy-nine and eight-tenths (779 8-10) feet, twenty-five hundred and forty-five and one-tenth (2,545 1-10) feet to corner No. 6, a pine post four (4) inches square, marked "4 x 661," from which the quarter section corner on east boundary of said section eighteen (18), in said township and range, bears north fifty-four (54) degrees eight (8) minutes and twenty (20) seconds east at the distance of twenty-seven hundred and sixty and eight-tenths (2,760 8-10) feet; thence from said corner No. 6, south fifteen (15) degrees west, five hundred and forty (540) feet to corner No. 1, a pine post four (4) inches square, marked "7 x 661"; thence north fifty-six (56) degrees west, sixteen hundred and eighty-nine and one-tenth (1,689 1-10) feet, to corner No. 8, a pine post (4) inches square, marked "4 x 661"; thence north seventy-six (76) degrees west, fourteen hundred and ninety-

two (1,492) feet, to the place of beginning, containing one hundred and twenty-four (124) acres and twenty-five hundredths (25-100) of an
202 acre of land, more or less, as represented by yellow shading in the following plat, said claim being commonly known as the Stinson placer mine.

[Here follows diagram marked p. 202.]

203 Now know ye, that the United States of America, in consideration of the premises, and in conformity with the said Revised Statutes of the United States, have given and granted, and by these presents do give and grant, unto the said James A. Sawyer and to his heirs and assigns, the said placer mining premises hereinbefore described as lot No. 661, embracing a portion of the unsurveyed public domain, excepting and excluding, however, from these presents all that portion of the surface ground hereinbefore described, which is embraced by said Tidal Wave lode.

To have and to hold said mining premises, together with all rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said James A. Sawyer and to his heirs and assigns forever, subject, nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted in its exterior limits to the boundaries of the said lot No. 661, as hereinbefore described, and to any veins or lodes of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, which may hereafter be discovered within said limits, and which are not claimed or known to exist at the date hereof.

Second. That should any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, be claimed or known to exist within the above described premises, at the date hereof, the same is expressly excepted and excluded from these presents.

204 Third. That the premises hereby conveyed may be entered by the proprietor of any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, for the purpose of extracting and removing the ore from such vein, lode, or deposit should the same, or any part thereof, be found to penetrate, intersect, pass through, or dip into the mining ground or premises hereby granted.

Fourth. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

Fifth. That in the absence of necessary legislation by Congress, the legislature of Colorado may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to the complete development thereof.

In testimony whereof I, James A. Garfield, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifteenth day of

June, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth.

205 By the President: JAMES A. GARFIELD,
[SEAL.] By WM. H. CROOK,
Secretary.

Recorded vol. 59, pages 272 to 278, inclusive.
Examined.
(S'g'd.) S. W. CLARK,
Recorder of the General Land Office.

(Endorsed:) Exhibit A.—R. H. B., examiner.

1150.—EXHIBIT B.—R. H. BUCK, *Examiner.*

[D. R. S.—H. F. C.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 24, 1883.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of U. S. mineral patent No. 5100, for the claim of James A. Sawyer upon the "Fanchon" placer, Leadville, Colorado, land district, is a true and literal exemplification from the records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on
206 the day and year above written.
[SEAL U. S. GEN. LAND OFFICE.]
(S'g'd) N. C. MCFARLAND,
Commissioner of General Land Office.

THE UNITED STATES OF AMERICA.

[Mineral certificate No. 286. General Land Office No. 5100.]

To all to whom these presents shall come, greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field notes of survey of the placer mining claim of James A. Sawyer, accompanied by the certificate of the register of the land office at Leadville, in the State of Colorado, whereby it appears that, in pursuance of the Revised Statutes of the United States, the said James A. Sawyer did, on the twenty-second day of April, A. D. 1880, enter and pay for said mining claim or premises, being mineral entry No. 286, in the series of said office, designated by the surveyor-general as lot No. 660, embracing a portion of the unsurveyed public domain in the California mining district, in the county of Lake and State of Colorado, in the district of lands subject to sale at Leadville, containing one hundred and thirteen and thirteen-hundredths (113 13–100) acres of land, more or less, according to the returns on file in the General Land Office, bounded, described, and platted as follows,

with magnetic variation at fifteen (15) degrees east, to wit: Beginning at corner No. 1, a pine post four (4) inches square, marked "1–660"
206½ and "1–661," the same being also corner No. 1 of survey No. 661, patented to Jas. A. Sawyer, with his claim upon the Stinson placer, from which the southwest corner of section eighteen (18) and the northwest corner of section nineteen (19) in township nine (9) south of range eighty (80) west of the sixth principal meridian, bears south one (1) degree, thirty-five (35) minutes and five (5) seconds west at the distance of sixteen hundred and eighty-eight and two-tenths (1688 2–10) feet; thence from said corner No. 1 south sixty-eight (68) degrees forty-nine (49) minutes west eleven hundred and ninety-seven and four-tenths (1197 4–10) feet to corner No. 2, a pine post four (4) inches square, marked "2–660;" thence south sixteen (16) degrees thirty (30) minutes west eight hundred and eighty-five (885) feet to corner No. 3, a pine post four (4) inches square, marked "3-660;" thence south seventy-six (76) degrees west twenty-six hundred and seventy (2670) feet to corner No. 4, a pine post four (4) inches square, marked "4–660," from which a blazed pine tree eighteen (18) inches in diameter, marked "B. T. 4–660," bears south thirty-seven (37) degrees east at the distance of twenty-one and three-tenths (21 3–10) feet, a pine tree ten (10) inches in diameter, blazed and marked "B. T. 4–660," bears north fourteen (14) degrees east at the distance of twenty (20) feet, and corner No. 3 of survey No. 1483, made for the claim of H. E. Hoelke, et al., upon the Juniatta lode, bears north seventeen (17) degrees fifty-two (52) minutes and thirty-four (34) seconds east at the distance of nine hundred and ninety-six and seven-tenths (996 7–10) feet; thence from said corner No. 4 north nine (9) degrees west twenty-one hundred (2,100) feet to corner No. 5, a pine post five (5) inches square, marked "5–660," from which a blazed pine tree ten
207 (10) inches in diameter, marked "B. T. 5–660," bears south fifty (50) degrees east at the distance of five and nine-tenths (5 9–10) feet, and a pine tree eight inches in diameter, blazed and marked "B. T. 5–660," bears north fifty-three (53) degrees east at the distance of seven and one-tenth (7 1–10) feet; thence from said corner No. 5 south seventy-one (71) degrees east ten hundred and eighty-eight (1,088) feet to corner No. 6, a pine post four (4) inches square, marked "6–660," from which a blazed pine tree (10) inches in diameter, marked "B. T. 6–660," bears north fifty (50) degrees thirty (30) minutes west at the distance of ten and seven-tenths (10 7-10) feet, and a pine tree fourteen (14) inches in diameter, blazed and marked "B. T. 6–660," bears south fifty-one (51) degrees east at the distance of seventeen (17) feet; thence from said corner No. 6 north seventy-five (75) degrees twenty-two (22) minutes east twenty hundred and sixty-eight and six tenths (2,068 6–10 feet to corner No. 7, a pine post four (4) inches square, marked "7–660" and "2–661," the same being corner No. 2 of said survey No. 661, from which a blazed pine tree eight (8) inches in diameter, marked "B. T. 7–660" and "2–661" bears south forty-three (43) degrees forty-five minutes west at the distance of six and five-tenths (6 5–10) feet, and a blazed pine tree ten (10) inches in diameter, marked "B. T. 7–660" and "2–661," bears south sixty-two (62) degrees east at the distance of twelve and three-tenths (12 3–10) feet; thence from said corner No. 7 south seventy-five (75) degrees fifty-five (55) minutes east twelve hundred and ninety-five and seven-tenths (1295

7–10) feet to the place of beginning, containing one hundred and thirteen and thirteen hundredths (113 13–100) acres of land, more or less. Excepting and excluding, however, from these presents all that portion of the
208 surface ground hereinbefore described, which is embraced by said survey No. 1483, as represented by yellow shading in the following plat, said claim being commonly known as the Fanchon placer Mine.

[Here follows diagram marked p. 208.]

209 Now know ye that the United States of America, in consideration of the premises and in conformity with the said Revised Statutes of the United States, have given and granted and by these presents do give and grant unto the said James A. Sawyer, and to his heirs and assigns, the said placer mining premises hereinbefore described as lot No. 660, embracing a portion of the unsurveyed public domain.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging, unto the said James A. Sawyer, and to his heirs and assigns forever; subject, nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted in its exterior limits to the boundaries of the said lot No. 660, as hereinbefore described, and to any veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, which may hereafter be discovered within said limits, and which are not claimed or known to exist at the date hereof.

Second. That should any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, be claimed or known to exist within the above-described premises at the date hereof, the same is expressly excepted and excluded from these presents.

Third. That the premises hereby conveyed may be entered by the proprietor of any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, for the purpose of extracting and removing the ore from such vein, lode, or
210 deposit, should the same or any part thereof be found to penetrate intersect, pass through, or dip into the mining ground or premises hereby granted.

Fourth. That the premises hereby conveyed shall be subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decision of courts.

Fifth. That in the absence of necessary legislation by Congress the legislature of Colorado may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to the complete development thereof.

In testimony whereof I, Chester A. Arthur, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the seventeenth day of November, in the year of our Lord one thousand eight hundred and

eighty-one, and of the independence of the United States the one hundred and sixth.

By the President:

CHESTER A. ARTHUR,
[SEAL.] By WM. H. CROOK,
Secretary.

Recorded vol. 64, pages 30 to 35, inclusive.

(S'g'd) S. W. CLARK,
211 *Recorder of the General Land Office.*

(Endorsed:) No. 1150. Exhibit B. R. H. B., examiner.

EXHIBIT C.—*R. H. B., Examiner.*

[D. K. S.—H. F. C.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 24, 1883.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of the papers in the matter of Leadville, Colorado, mineral entry No. 286, for the claim of James A. Sawyer, upon the Fanchon placer, is a true and literal exemplification from the originals on file in this office.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal U. S. Gen. Land Office.] (S'g'd) N. C. MCFARLAND,
Commissioner of General Land Office.

212 *Proof that no know' veins exist in a placer mining claim.*

STATE OF COLORADO,
County of Lake, ss:

Wm. Godfrey and J. F. Anderson, of the said county and State, being first duly sworn, each for himself, deposes and says that he is well acquainted with the Fanchon placer mining claim, embracing 118,926 acres, situated in the California mining district, in the county of Lake, and State of Colorado, owned and worked by J. A. Sawyer, applicant for United States patent; that for many years he has resided near and often been upon the said mining premises, and that no known vein or veins of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper exists on said mining claim or on any part thereof, so far as he knows, and he verily believes that none exist thereon. And further, that he has no interest whatever in the said placer mine—Fanchon.

J. F. ANDERSON.
WM. GODFREY.

Subscribed and sworn to before me this 14th day of February, A. D. 1880.

[SEAL.] (S'g'd) A. S. WESTON,
Notary Public.

(Endorsed:) Case of the Fanchon placer. Form 2. U. S. mining act, May 10, 1872. Proof that no known veins exist in a placer mining claim. Filed in the U. S. land office at Leadville, Colorado, February 11, 1880. Jno. J. Henry, register.

213 *Statement and charge of fees.*

STATE OF COLORADO,
County of Lake, ss:

J. A. Sawyer, being first duly sworn according to law, deposes and says that he is one of the applicants for patent for the Fanchon placer in California mining district, county of Lake, State of Colorado, under the provisions of the act of Congress approved May 10, 1872, and that in the prosecution of said application he has paid out the following amount, viz: To the credit of the surveyor-general's office $25.00 (twenty-five dollars); for surveying, $75.00 (seventy-five dollars); for filing in the local land office, $10.00 (ten dollars); for publication of notice, $21.50 (twenty-one 50–100), and for the land embraced in his claim, $297.50 (two hundred & ninety-seven 50–100).

(S'g'd) JAMES A. SAWYER.

Subscribed and sworn to before me this twenty-sixth day of April, A. D. 1880.

[SEAL.] (S'g'd) A. S. WESTON, [SEAL.]
Notary Public.

Case of the Fa'chon placer. Form J. U. S. mining act, May 10, 1872. Statement and charge of fees. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880. Jno. J. Henry, register.
1880. 31.912–8.

214 *Receiver's receipt.*

(Duplicate to be given the purchaser.)
Mineral entry.
No. 286.
Lot No. 660.

U. S. LAND OFFICE,
At Leadville, Col., April 27, 1880.

Received from James A. Sawyer the sum of two hundred and ninety-seven 50–100 dollars, the same being in full for the surface area embraced by survey No. 660, ——— meridian, said mineral claim or lot of land being situate in California mining district, county of Lake, and State of Colorado, and known as the Fanchon placer mining claim, embracing 118 926–1000 acres, as shown by said survey.

$297.50.

WM. K. BURCHINELL, *Receiver.*

(Endorsed:) Receiver's receipt. Case of the Fanchon placer mining claim. Lot No. 660 in T. R. In California mining district, Lake County, Colorado, claimed by James A. Sawyer. 1880. 31.912–1.

Affidavit of citizenship.

STATE OF COLORADO,
County of Lake, ss:

J. A. Sawyer, being first duly sworn according to law, deposes and says, that he is the applicant for said patent for the Fanchon placer min-

215 ing claim, situated in California mining district, county of Lake, Colorado; that he is a native citizen of the United States, and is now a resident of Leadville, Colorado.

JAMES A. SAWYER.

Subscribed and sworn to before me this 10th day of February, A. D. 1880.

[SEAL.] A. S. WESTON,
Notary Public.

NOTE.—If the applicant is a naturalized citizen or has declared his intention to become a citizen he should show in his affidavit where, when, and before what court he was naturalized or his declaration was made.

(Endorsed:) 2. Case of the Fanchon placer. U. S. mining act. May 10, 1872. Affidavit of citizenship. Filed in the U. S. land office, at Leadville, Colorado, February 11, 1880. Jno. J. Henry, register. 1880. 37078. In 1.

Agreement of publisher.

The undersigned, publisher and proprietor of the Weekly Chronicle, a weekly newspaper published at Leadville, county of Lake, and State of Colorado, does hereby agree to publish a notice, dated United States Land Office, at Leadville, Colorado, February, 1880, required by Chapter six of Title thirty-two, Revised Statutes of the United States, of the intention of J. A. Sawyer to apply for a patent for his claim on the Fanchon placer, situated in California mining district, county of Lake, ——— of ———, State ——— and to hold the said ——— Coloroda ——— alone responsible for the amount due for publishing the same. And it is

216 hereby expressly stipulated and agreed that no claim shall be made against the Government of the United States or its officers or agents for such publication.

Witness my hand and seal this ——— day of February, A. D. 1880.

CHRONICLE PUB. CO.
C. S.

Witness:

(Endorsed:) 5. Case of the Fanchon placer. Agreement of publisher. Filed in the U. S. land office, at Leadville, Colorado, February 11, 1880. Jno. J. Henry, register. $\frac{1880}{37078}$———er 3.

Affidavit of five hundred dollars improvements.

STATE OF COLORADO,
County of Lake, ss:

Wm. Godfrey and J. F. Anderson, of lawful age, being first duly sworn according to law, depose and say that they are acquainted with the Fanchon placer mining claim, in California mining district, county and State aforesaid, for which J. A. Sawyer has made application for patent under the provisions of Chapter six, of Title thirty-two, Revised Statutes of the United States, and that the labor done and the improvements made thereon

by the applicant and his grantors exceed five hundred dollars in value, and said improvements consist of *of* pits and open cuts as shown upon the plat.

[SEAL.] WM. GODFREY.
J. F. ANDERSON.

217 Subscribed and sworn to before me this 10th day of February, A. D. 1880.

A. S. WESTON,
Notary Public.

(Endorsed:) 4. Case of the Fanchon placer. Affidavit of five hundred dollars improvements. Filed in the U. S. land office at Leadville, Colorado, February 11, 1880. Jno. J. Henry, register. $\frac{1880}{37078}$ ——— en. 2.

Proof of publication.—Reprinted copy of notice of application.

STATE OF COLORADO,
County of Lake, ss:

C. C. Davis, being first duly sworn, deposes and says that he is the ——— of the Carbonate Weekly Chronicle, a newspaper published at Leadville, in Lake County, in the State of Colorado, ——— ———; that the notice of the application for a patent for the Fanchon placer mining claim, of which a copy is hereto attached, was first published in said newspaper, in its issue dated the fourteenth of February, 1880, and was published in each (weekly) issue of said newspaper for (ten consecutive weeks) thereafter, the full period of sixty days, the last publication thereof being in the issue dated the twenty-fourth of April, 1880.

(S'g'd) C. C. DAVIS.

218 Subscribed and sworn to before me this 27 day of April, A. D. 1880.

[SEAL.] A. S. WESTON,
Notary Public.

Mining application No. 451.

UNITED STATES LAND OFFICE,
Leadville, Colorado, February 11, 1880.

Notice is hereby given that J. A. Sawyer, whose post-office address is Leadville, Colorado, had this day filed his application for a patent for 118,926 acres of the Fanchon placer, situated in California mining district, county of Lake, and State of Colorado, and designated by the field-notes and official plat on file in this office as lot No. 660, which is described as follows, to wit: Beginning at corner No. 1, being the same as corner No. 1 of the Stinson placer, from which the southwest corner of section 18, township 9 south, range 80 west, bears south 1° 35′ 05.6″ west 1,688.17 feet; thence south 68° 49′ west 1,197.4 feet to corner No. 2; thence south 16° 30′ west 885 feet to corner No. 3; thence south 76° west 2,670 feet to corner No. 4; thence north 9° west 2,100 feet to corner No. 5; thence south 71° east 1,088 feet to corner No. 6; thence north 75° 22′ east 2,068.6 feet to corner No. 7; thence south 75° 55′ east 1,295.7 feet to corner No. 1, the place of beginning (magnetic variation 15° east), con-

taining 118,926 acres. The location of this mine is recorded in the recorder's office of Lake County, in book "2" of pre-emptions. The
219 adjoining claim on the north, the Stinson placer, others, if any, are unknown. Any and all persons claiming adversely any portion of said Fanchon placer mine or surface ground are required to file their adverse claims with the register of the United States land office at Leadville, in the State of Colorado, during the sixty days' period of publication hereof, or they will be barred by virtue of the provisions of the statute.

(S'g'd) JNO. J. HENRY,
Register.
WM. K. BURCHINELL,
Receiver.

A. S. Weston, att'y for applicant (first publication February 14).

(Endorsed:) Case of the Fanchon placer. Form H. U. S. mining act, May 10, 1872. Proof of publication. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880. Jno J. Henry, Register.

1880
31. 912-9

Proof of posting notice and diagram on the claim.

STATE OF COLORADO,
County of Lake, ss:

Wm. Godfrey and J. F. Anderson, each for himself, and not one for the other, being first duly sworn, according to law, deposes and says, that he is a citizen of the United States, over the age of 21 years, and was present on the 10th day of February, A. D. 1880, when a plat repre-
220 senting the Fanchon placer claim and certified to as correct by the United States surveyor-general of Colorado, and desi nated by him as lot No. 660, together with a notice of the intention of J. A. Sawyer to apply for a patent for the mining claim and premises so platted, was posted in a conspicuous place upon said mining claim, to wit, upon the south end of the cabin, which is situated in the center of the placer claim, where the same could be easily seen and examined, the notice, so conspicuously posted upon said claim, being in words and figures as follows, to wit:

Notice of the application of J. A. Sawyer for a United States patent.

"Notice is hereby given given that in pursuance of chapter six of title thirty-two of the Revised Statutes of the United States," J. A. Sawyer, claiming 118.926 acres, lying and being situated within the California mining district, county of Lake and State of Colorado, has made application to the United States for a patent for the said mining claim, which is more fully described as to metes and bounds by the official plat herewith posted, and by the field notes of survey thereof, now filed in the office of the register of the district of lands, subject to sale at Leadville, Colorado, which field-notes of survey describe the boundaries and extent of said claim on the surface with magnetic variation at 15° east, as follows, to wit:

Give full description of courses and distances.

Beginning at cor. No. 1, a pine post 4″ x 4″ x 4′, set 2 feet deep and marked 1–660 and 1–661, being the same as corner No. 1 of the Stinson

placer, U. S. survery No. 661, from which the SW. cor. of Sec. 18
221 and the NW. cor. of Sec. 19, T. 9 S., R. 80 W., bears S. 1° 35′ 05.6″ W. 1,688.17 feet; thence S. 68° 49′ W. 1,197.4 feet to cor. No. 2, a pine post 4″ x 4″ x 4′ marked 2–660, and from which it was impracticable to have bearing trees; thence S. 16° 30′ W. 885 feet to cor. No. 3, a pine post 4″ x 4″ x 4′ marked 3–660, and from which it was impracticable to have bearing trees.

Thence S. 76° W. 2,670 feet to cor. No. 4, a pine post 4″ x 4″ x 4′ marked 4–660, from which a blazed pine tree 18″ in dia. and marked B. T. 4–660 bears S. 37° E. 21.3 feet, and a pine tree 10″ in dia. blazed and marked B. T. 4–660 bears N. 14°, E. 20 feet. Thence N. 9° W. 2,100 feet to cor. No. 5, a pine post 5″ x 5″ x 4′ marked 5–660, and from which a pine tree 10″ in dia. blazed and marked B. T. 5–660 bears S. 50° E. 5.9′, and a pine tree 8″ in. dia. blazed and marked B. T. 5–660 bears N. 53° E. 71 feet, also from which two prominent mountain peaks, but names unknown, bear the one N. 25° 45′ W., and the other N. 51° W.

Thence S. 71° E. 1,088 feet to cor. No. 6, a pine post 4″ x 4″ x 4′ marked 6–660, and from which a blazed pine tree 10″ in dia., marked B. T. 6–660, bears N. 50° 30′ W. 10 & $\frac{7}{10}$, and a pine tree 14″ in dia., blazed and marked B. T. 6–660, bears S. 51° E. 17 feet.

Thence N. 75° 22′ E. 2,068.6 feet to cor. No. 7, a pine post 4″ x 4″ x 4′, marked 7–660 and 2–661, being the as cor. No. 2, of the Stinson placer, U. S. survey 661, from which a blazed pine tree 8″ in dia., marked B. T. 7–660 and 2–661 bears S. 43° 45′ W. 65 feet, and a blazed pine tree 10″ in dia., marked B. T. 7–660 and 2–661, bears S. 62° E. 12.3 feet, and also two prominent mountain peaks, names unknown, but the same as
222 seen from cor. No. 5 bear, the one N. 32° 30′ W., and the other N. 55° 30′ W.

Thence S. 75° 55′ E. 1,295.7′ to cor. No. 1, the place of beginning, containing 118.926 acres. The extreme eastern portion of the claim forms a part of Sec. 18, T. 9 S., R. 80 W. The remainder of the claim lies entirely west of the town line, the said mining claim being of record in the office of the recorder of said county at Leadville, in the county and State aforesaid, the presumed general course or direction of the said Fanchon placer being shown upon the plat posted herewith, as near as can be determined from present developments, this claim being for 118.926 acres, as shown upon the official plat posted herewith, the said mining premises hereby sought to be patented, being bounded on the north by the Stinson placer mining claim; others, if any, are unknown. Any and all persons claiming adversely the mining grounds, premises, or any portion thereof so described, surveyed, platted, and applied for, are hereby notified that unless their adverse claims are duly filed as according to law and the regulations thereunder within sixty days from the date hereof, with the register of the United States land office at Leadville, in the State of Colorado, they will be barred, in virtue of the provisions of said statute.

J. A. SAWYER.

Dated on the ground this 10th day of February, A. D. 1880.

Witness:

WM. GODFREY.
J. F. ANDERSON.

Subscribed and sworn to before me this 10th day of February, A. D. 1880, and I hereby certify that I consider the above deponents cred-

223 ible and reliable witnesses, and that the foregoing affidavit and notice were read by each of them before their signatures were affixed thereto and the oath made by them.

A. S. WESTON, [SEAL.]
Notary Public.

NOTE.—The notice to be posted on the claim with the plat is given in the above form.

(Endorsed:) 3. Case of the Fanchon placer. Proof of posting notice and diagram on claim. Filed in the U. S. land office at Leadville, Colorado. February 11, 1880. Jno. J. Henry, register. $\frac{1880}{37078}$——en. 4.

Certificate that no suit is pending.

STATE OF COLORADO,
County of Lake, ss:

I, Charles W. Taylor, clerk of the district court in and for Lake County, Colorado, do hereby certify that there is now no suit or action of any character pending in said court involving the right of possession to any portion of the Fanchon placer mining claim, and that there has been no litigation before said court affecting the title to said claim, or any part thereof, for ——— years last past other than what has been finally decided in favor of J. A. Sawyer et al., applicants for a patent to said placer claim.

In witness whereof I have hereunto set my hand and affixed
224 the seal of said court at my office in Leadville, Col., this 27 day of April, A. D. 1880.

CHAS. W. TAYLOR,
Clerk of the District Court, Lake County, Colorado.
[SEAL.] By WM. RAYMOND,
Deputy.

(Endorsed:) Case of the Fanchon placer. Certificate that no suit is pending. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880. Jno. J. Henry, register. $\frac{1880}{31.91}$—

Proof that plat and notice remained posted on claim during time of publication.

STATE OF COLORADO,
County of Lake, ss:

J. A. Sawyer, being first duly sworn according to law, deposes and says that he is claimant (and co-owner with, &c.) in the Fanchon placer mining claim, situated in the California mining district, Lake County, Colorado, the official plat of which premises, together with the notice of intention to apply for a patent therefor, was posted thereon on the tenth day of February, A. D. 1880, as fully set forth and described in the affidavit of William Godfrey and J. F. Anderson, dated the tenth day of February, A. D. 1880, which affidavit was duly filed in the office of the reg-
225 ister, at Leadville, Colorado, in this case, and that the plat and notice so mentioned and described remained continuously and con-

spicuously posted upon said mining claim from the tenth day of February, A. D. 1880, until and including the twenty-fourth day of April, A. D. 1880, including the sixty days' period during which notice of said application for patent was published in the newspaper.

JAMES A. SAWYER.

Subscribed and sworn to before me this twenty-sixth day of April, A. D. 1880, and I hereby certify that the foregoing affidavit was read to the said J. A. Sawyer previous to his name being subscribed thereto, and that deponent is a respectable person, to whose affidavit full faith and credit should be given.

A. S. WESTON, [SEAL.]
Notary Public.

[SEAL.]

(Endorsed:) Case of the Fanchon placer. Form E. U. S. mining act, May 10, 1872. Proof that plat and notice remained posted on claim during notice of publication. Filed in U. S. land office at Leadville, Colorado, April 27, 1880. Jno. J. Henry, register. $\frac{1880.}{31912-6.}$

Register's certificate of posting notice for sixty days.

U. S. LAND OFFICE AT LEADVILLE, COLORADO,
April 27, 1880.

I hereby certify that the official plat of the Fanchon placer was
226 filed in this office on the ——— day of February, A. D. 1880, and that the attached notice of the intention of J. A. Sawyer et al. to apply for a patent for the mining claim or premises embraced by said plat, and described in the field-notes of survey thereof filed in said application, was posted conspicuously in this office on the ——— day of February, A. D. 1880, and remained so posted until the twenty-sixth day of April, A. D. 1880, being the full period of sixty consecutive days, as required by law, and that said plat remained in this office during that time, subject to examination, and that no adverse claim thereto has been filed.

JNO. J. HENRY,
Register.

(The notice posted in the office should be attached to this certificate.)

(Endorsed:) Case of the Fanchon placer. Form F. U. S. mining act, May 10, 1872. Register's ccertificate of posting notice for sixty days. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880. ——— ———, register ———. $\frac{1880.}{31.912-10.}$

SURVEYOR-GENERAL'S OFFICE,
Denver, Colo., May 27, 1881.

I, Albert Johnson, surveyor-general of Colorado, do hereby certify that the value of labor and improvements upon the mining claim known as the claim of J. A. Sawyer et al. upon the Fanchon placer lode in California mining district, Lake County, Colorado, being survey No. 660, district No. 3, placed upon said claim by the claimant or his grantors, is not less

than five hundred dollars, and that said improvements consist of
227 additional labor and development of improvements shown in field-notes of the survey.

This certificate is based upon the affidavit of Henry D. Bates, U. S. Dep. Min. Sur., which affidavit is now on file in this office.

ALBERT JOHNSON,
Surveyor-General of Colorado.

(Endorsed:) "1881" 39545 enc. ———. Filed in Leadville, Colo., land office May 28, 1881. Wm. K. Burchinell, receiver.

Abstract of title to the Fanchon placer.

Book A.
Page 234.
11925.

Location certificate, Fanchon placer claim.

Know all men by these presents:

That we, J. A. Sawyer, W. Arens, T. H. Reims, A. M. Rucher, M. J. David, O. S. Crowther, P. Henderson, L. Rucher, of the county of Lake, State of Colorado, claim, by right of discovery and location, the Fanchon placer claim, containing 124 74–100 acres, situated on the divide between Colorado Gulch and Lake Creek, about six miles west of Leadville, Colorado, and described as follows, to wit: Beginning at cor. No. 1, thence S. 68° 49′ W. 1,197.4 feet to corner No. 2; thence S. 16° 30′ W. 885 feet to corner No. 3; thence S. 76° W. 3,148.0 feet to corner No. 4; thence N. 9° W. 2,071.0 feet to corner No. 5; thence S. 71° E. 1,088 feet to corner No. 6; thence N. 81° E. 611 feet to corner No. 7; thence N. 85° E. 951 feet to corner No. 8; thence N. 55° E. 667 feet to corner No. 9;
228 thence N. 78° E. 397 feet to corner No. 10; thence S. 76° 18′ E. 1,266.05 feet to corner No. 1, the place of beginning. From corner No. 3 Mt. Sheridan bears S. 71° 22′ E.; peak on Mosquito Range bears N. 76° 33′ E. Date of location, June 10th, 1879; date of certificate, November 12th, 1879; recorded Nov. 13, 1879, at 9 a. m.

Book P.
Page 465.
14892.

In relocation certificate, Fanchon placer claim.

Know all men by these presents:

That we, J. A. Sawyer, W. Arens, F. H. Reims, A. M. Rucker, M. J. David, P. S. Crowther, P. Henderson, and L. Rucker, of the county of Lake and State of Colorado, claim, by right of discovery and relocation, the Fanchon placer, containing 118 93–100 acres, situated on the divide between Colorado Gulch and Lake Creek, in California mining district, county of Lake and State of Colorado, and about six miles west of Leadville, Colorado, and described by metes and bounds as follows: Beginning at cor. No. 1, being same as cor. 1 of the Stinson placer, thence S. 68° 49′ W. 1197.4 to cor. 2; thence S. 16° 30′ W. 885 ——— ——— to cor. 3;

thence S. 76° 00′ W. 2,670 to cor. 4; thence N. 9° 00′ W. 2,100 to cor. 5; thence S. 71° 00′ E. 1,088 to cor. 6; thence N. 75° 22′ E. 2,068.6 to cor. 7.

Being the same as cor. No. 2, Stinson Placer; thence S. 75° 55′ E. 1,295.7 ft. to cor. No. 1, the place of beginning, Mt. Peaks. From cor. No. 5 a prominent mt. peak, name unknown, bears N. 51° W., also
229 another peak, name unknown, bears N. 25° 45′ W., and from cor. 7 the same peaks bear, respectively, N. 55° 30′ W. and N. 32° 30′ W. Date of original certificate, Nov. 12, 1879; recorded in Lake County records, book A, page 234, Nov. 13, 1879; date of relocati , Dec. 5, 1879.

J. A. SAWYER.
W. ARENS.
T. H. REIMS.
A. M. RUCKER.
M. J. DAVID.
O. S. CROWTHER.
P. HENDERSON.
L. RUCKER.

Recorded Jan'y 12, 1880, at 11.30 a. m.
18793.
B. K. 38.
Pg. 231.

W. Arens, T. H. Raines, Percival Henderson, A. M. Rucker, M. J. David ("no sig."), O. S. Crowther, L. Rucker ("no sig.") to J. A. Sawyer.—Quitclaim deed, d't'd Feb. 2nd, 1880. Ack. Feb. 2nd, 1880. Record Mar. 22d. Consideration, 500.00. Conveys Fanchon placer & other property.

20064. Mark J. David to J. A. Sawyer.—Quitclaim deed, d't'd Apr. 13, 1880. Ack. Apr. 13, 1880. Record Apr. 15, 1880. Consideration, ten dollars. Conveys his interest in Fanchon placer & other property.

20179. Louis Rucker to J. A. Sawyer.—Quitclaim deed, d't'd Mar. 31st, 1880. Ack. Apr. 1, 1880. Record Apr. 17, 1880. Consideration, 10.00. Conveys 1st ptys. interest in the Fanchon placer and other property.

230 STATE OF COLORADO,
County of Lake, ss:

I, Joseph H. Wells, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct abstract of title to the Fanchon placer, and sets forth all transfers to or from the within-named parties of said placer, as the same appears of record in my office.

Witness my hand and official seal this the 17th day of April, A. D. 1880, at 6 p. m.

JOS. H. WELLS,
Clerk and Recorder.
GEO. F. WOLVERTON,
Deputy.

(Endorsed:) Case of the Fanchon placer. Abstract of title. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880. Jno. J. Henry, register. 1880.

31.912–5.

U. S. LAND OFFICE,
Leadville, Colorado, August 6th, 1880.

In the matter of the protest of E. Hoelke et al., owner of the Juniatta lode, against the issuance of a patent to James A. Sawyer for the Fanchon placer claim in Independence mining district in Lake County, Colorado. To the register and receiver of the U. S. land office at Leadville, Colorado.

You are hereby notified that the above-named protestants with-
231 draw their protest heretofore filed by them against the issuance of a U. S. patent to Jas. A. Sawyer for the Fanchon placer claim, U. S. survey No. 660.

ERNEST HOELKE,
For myself and other co-owners of the Juniatta Lode.

(Endorsed:) Withdrawal of patent. Filed in the U. S. land office at Leadville, Colorado, August 6, 1881. Jno. J. Henry, register.

UNITED STATES LAND OFFICE,
Leadville, Colorado, August 6, 1881.

Hon. COMMISSIONER GENERAL LAND OFFICE:

SIR: I have the honor to transmit herewith a withdrawal of the protest of the owner of the "Juniatta" lode against the inssuance of patent for the "Fanchon" placer.

Entry of the placer was made April 27, 1881. Certificate 286.

Most respectfully,

JNO. J. HENRY, *Register.*

(Endorsed:) Register at Leadville, Colo. Aug .6, 1881. Transmitts withdrawal of protest against Fanchon placer.

UNITED STATES LAND OFFICE,
Leadville, Colorado, May 18th, 1880.

Hon. COMMISSIONER GENERAL LAND OFFICE:

232 SIR: I have the honor to transmit herewith papers in the case of the Fanchon placer mineral, entry No. 286, omitted in my letter of April 30, 1880.

Very respectfully, your ob'd't servant,

WM. K. BURCHINELL,
Receiver.

(Endorsed:) U. S. land office, Leadville, May 18, 1880. Receiver transmits papers in case of Fanchon placer, omitted in letter of April 3rd.

Proof that no known veins exist in a placer mining claim.

STATE OF COLORADO,
County of Lake, ss:

J. A. Sawyer, of the said county and State, being first duly sworn, each for himself, deposes and says, that he is well acquainted with the Fanchon

placer mining claim, embracing 118.926 acres, situated in the California mining district, in the county of Lake and State of Colorado, owned and worked by J. A. Sawyer, applicant for United States patent; that for many years he has resided near and often been upon the said mining premises, and that no known vein or veins of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper exist on said mining claim, or on any part thereof, so far as he knows, and he verily believes that none exist thereon, And further, that he is the applicant for a patent to the said placer mine Fanchon.

233 JAMES A. SAWYER.

Subscribed and sworn to before me this 27th day of April, A. D. 1880.

[SEAL.] A. S. WESTON,
Notary Public.

(Endorsed:) Case of the Fanchon placer. Form L., U. S. mining act. May 10, 1872. Proof that no known veins exist in a placer mining claim. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880. Jno. J. Henry, register.

Mineral entry.
No. 286.
Lot No. 660.

Register's final certificate of entry.

U. S. LAND OFFICE,
At Leadville, Col., April 27, 1880.

It is hereby certified that, in pursuance of the mining act of Congress, approved July 26, 1866, and the acts amendatory thereof, approved July 9, 1870, and May 10, 1872, James A. Sawyer, whose post-office address is Leadville, Colorado, on this day purchased that mineral claim or lot of land designated as survey No. 660, situate, lying, and being in the California mining district, in the county of Lake, and State of Colorado, known as the Fanchon placer mining claim, embracing ——— linear feet, with 118 926–1000 acres of surface ground, as shown by said survey, for which the said James A. Sawyer has this day made payment to the receiver in full, amounting to the sum of two hundred & ninety-seven 50–100 dollars.

234 Now, therefore, be it known that, upon the presentation of this certificate to the Commissioner of the General Land Office, together with the plat, survey, and description of said claim, a patent shall issue thereupon to the said James A. Sawyer, if all be found regular.

JNO. J. HENRY,
Register.

(Endorsed:) Register's final certificate of entry. Case of the Fanchon Placer mining claim of James A. Sawyer, upon the , being lot No. 660, in T. of R. , California mining district, Lake County, Colorado, claimed by James A Sawyer.

Application for patent.

STATE OF COLORADO,
County of Lake, ss:

Application for patent for the Fanchon placer mining claim.

To the REGISTER AND RECEIVER OF THE U. S. LAND OFFICE,
At Leadville, Colorado:

J. A. Sawyer, being duly sworn, according to law, deposes and says, that in virtue of a compliance with the mining rules, regulations, and customs, by himself, the said J. A. Sawyer, applicants for patents herein, has become the owner of, and is in the actual, quiet, and undisturbed possession of 118.926 acres of the Fanchon placer for the convenient working thereof, as allowed by local rules and customs of miners; said mineral claim being situated in the California mining district, county of Lake, and State of Colorado, and being more particularly set forth and described in the official field-notes of survey thereof, hereto attached, dated 28th day of January, A. D. 1880, and in the official plat of said survey, now posted conspicuously upon said mining claim or premises, a copy of which is filed herewith. Deponent further states that the facts relative to the right of possession of himself to said mining claim and surface ground, so surveyed and platted, are substantially as follows, to wit:

I. Said placer was located the 12th day of November, A. D. 1879, by J. A. Sawyer et al., and recorded the 13th day of November A. D. 1879, in book "I" at page 234, of the records of said Lake County. Relocated 5th day of December, A. D. 1879, by J. A. Sawyer, W. Arens, T. H. Renus, A. M. Tucker, M. J. David, O. S. Crowther, P. Henderson, and L. Rucker. Recorded January 12th, 1880, in Book "P" at page 465, of the records of said Lake County.

II. Thereafter, as shown by the abstract of title, W. Arens, F. H. Renus, A. M. Rucker, M. J. David, O. S. Crowther, P. Henderson, and L. Rucker conveyed all of their right, title, and interest to J. A. Sawyer.

Which will more fully appear by reference to the copy of the original record of location and the abstract of title hereto attached and made a part of this affidavit; the value of the labor done and the improvements made upon said Fanchon placer claim by himself and other locators, being equal to the sum of five hundred dollars, and said improvements consist of pits and open cuts, as shown upon the plat and more particularly described in the field-notes. In consideration of which facts, and in conformity with the provisions of chapter six of title thirty-two of the Revised Statutes of the United States, application is hereby made for and in behalf of said J. A. Sawyer, for a patent from the Government of the United States for the said Fanchon placer mining claim, so officially surveyed and platted.

JAMES A. SAWYER.

Subscribed and sworn to before me this 10th day of February, A. D. 1880; and I hereby certify that I consider the above deponent a creditable and reliable person, and that the foregoing affidavit, to which was attached

the field-notes of survey of the Fanchon placer mining claim, was read and examined by him before his signature was affixed thereto and the oath made by him.

A. S. WESTON, [SEAL.]
Notary Public.

(Endorsed:) Case of Fanchon placer. Application for patent for mining claim. ——— ——— applicant. ——— ——— A. D. 18—. Filed in the U. S. land office at Leadville, Colorado, February 11, 1880. Jno. J. Henry, register.

Survey No. 660.—District No. 3.

Transcript of field-notes of the survey of the claim of J. A. Sawyer et al. upon the Fanchon placer in California mining district, Lake County, Colorado. Surveyed by Henry D. Bates, U. S. deputy surveyor.

237 Beginning at cor. No. 1 a pine post 4″x4″x4′ set 2 ft. deep and marked 1–660 and 1–661, being the same as cor. No. 1 of the
Feet. Stinson placer, U. S. Sur. 661 (A. J. Sawyer et al., applicants), from which the S. W. cor. of sec. 18 and the N. W. cor. of sec. 19, T. 9, S. R. 80 W., bears S. 1° 35′ 05″. W., 1,688.17 feet. (Variation in all cases being 15° E.); thence S. 68° 49′ W.

1197.4 to cor. No. 2, a pine post 4″x4″x4′, marked 2–660, and from which it was impracticable to have bearing trees; thence S. 16° 30′ W.

885.0 to cor. No. 3, a pine post 4″x4″x4′, marked 3–660, and from which it was also impracticable to have bearing trees; thence S. 76° 00′ W.

2670.0 to cor. No. 4, a pine post 4″x4″x4′, marked 4–660, from which a blazed pine tree, 18″ in diameter and marked B. T. 4–660, bears S. 37° E. 21′.3, and pine tree 10″ in diameter, blazed and marked B. T. 4–660, bears N. 14° E. 20.0. Corn. No. 3, Sur. No. 1483, the claim of H. E. Hoelke et al. upon the Juniatta lode, bears N. 17° 52′ 34″ E. 996.7 ft.; thence N. 9° 00′ W.

Feet.

2100.0 to cor. No. 5, a pine post 5″x5″x4′, marked 5–660, and from which pine tree 10″ in diameter, blazed and marked B. T. 5–660, bears S. 50° E. 5.9′, and pine tree 8″ in diam., blazed and marked B. T. 5–660, bears N. 53° E. 7.1′, also from which two prominent mountain peaks, but names unknown, bear the one N. 25° 45′ W., and the other N. 51° 00′ W.; thence S. 71° 00′ E.

238 1088.0 to cor. No. 6, a pine post 4″x4″x4′, marked 6–660, and from which a blazed pine tree 1° 0″ in dia., marked B. T. 6–660, bears N. 50° 30′ W. 10.7, and pine tree 14″ in dia., blazed and marked B. T. 6–660, bears S. 51° E. 17′; thence N. 75° 22′ E.

2068.6 to corner No. 7, a pine post 4″x4″x4′, marked 7–660 and 2–661, being the same as cor. No. 2 of the Stinson placer, U. S. survey 661, &c., as mentioned above, from which a blazed pine tree 8″ in diameter, marked B. T. 7–660 and 2–661, bears S. 43° 45′ W. 6.5′, and blazed pine tree 10″ in dia., marked B. T.

Feet. 7–660 and 2–661, bears S. 62° E. 12.3, and also two prominent mountain peaks, names unknown, but the same as seen from cor. No. 5, bear the one N. 32° 30′ W., and the other N. 55° 30′ W.; thence S. 75° 55′ E.

1295.7 to cor. No. 1, the place of beginning, containing acres, more or less, 113.126, exclusive of conflict with Juniatta lode lot No. 1483. There is but one adjoining claim, the Stinson placer, having the side 7–1 in common and no conflicting claims, or if so they are unknown. From cor. No. 1, the S. W. cor. of sec. 18 and the N. W. cor. of of sec. 19, T. 9 S., R. 80 W., bears S. 1° 35′ 05.6″ W., 1688.17 ft. Variation being 15° east.

The improvements on this placer claim consist of pits and open cuts as shown upon the plat and more particularly described as follows:

From cor. No. 2 a pit 4′x4′x8′ deep bears N. 28° 42′ W. 236.8′;
239 also an open cut twenty feet long and two and one-half feet deep, and a pit 3′x8′x9′ deep at the E. end of the same, bears N. 69° 50′ W. 405′ from cor. No. 2, and also from cor. No. 2 a pit 4′x12′x12′ deep bears S. 78° W. 448.6′; from cor. No. 3 a pit 4′x7′x11 deep bears N. 46° 59′ W. 604.0.

From cor. No. 6 an open cut of 18′ and 3′ deep, with a pit 4′ x 6′ x 11′ deep at the N. end, bears S. 35° 7′ E. 932′. Also a pit 4′ x 8′ x 10′ deep bears S. 49° 22′ E. 1173′, and a pit 3′ x 7′ x 10½′ deep bears S. 50° 59′ E. 1308′.6, and also a pit 4′ x 6′ x 11′ deep bears S. 71° 15′ E. 1263′.

It is my opinion that the actual cost of the above is about four hundred dollars ($400.00).

There is no known lode upon the above-described placer.

The extreme eastern portion of the claim forms a part of sec. 18, T. 9 S., R. 80 W. The remainder of the claim lies entirely west of the town line.

The instrument used in this survey was an engineer's transit.

List of the names of individuals employed to assist in running, measuring, and marking the lines and corners described in the foregoing field-notes of the survey of the claim of J. A. Sawyer et al., upon the Fanchon placer, in California mining district, Lake County, Colorado.

(Sig.) FRANK KINGSLEY.
WM. GODFREY.

We hereby certify that we assisted Henry D. Bates, U. S. deputy mineral surveyor, in surveying the exterior boundaries and marking
240 the corners of the claim of J. A. Sawyer et al., upon the Fanchon placer, in California mining district, Lake County, Colorado, and that said survey has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according to the instructions furnished by the surveyor-general.

(Sig.) FRANK KINGSLEY.
WM. GODFREY.

Subscribed and sworn to by the above-named persons before me this 14th day of January, 1880.

[SEAL.] JAMES L. HODGES,
Notary Public.

I, Henry D. Bates, deputy U. S. mineral surveyor, do solemnly swear that, in pursuance of an order from William L. Campbell, surveyor-general of the public lands in the State of Colorado, bearing date the 19th day of November, 1879, and in strict conformity with the laws of the United States and instructions furnished by said surveyor-general, I have faithfully surveyed the claim of J. A. Sawyer et al., upon the Fanchon placer lode in California mining district, Lake County, Colorado, and do further solemnly swear that the foregoing are the true and original field-notes of such survey, and that the improvements are as therein stated.

(S'g'd) HENRY D. BATES,
U. S. Deputy Mineral Surveyor.

Subscribed by said Henry D. Bates, U. S. deputy mineral surveyor, and sworn to before me this 14th day of January, 1880.

[SEAL.] JAMES L. HODGES,
Notary Public.

241 I certify that the foregoing transcript of the field-notes of the survey of the mining claim of J. A. Sawyer et al., situate in California mining district, county of Lake and State of Colorado, has been correctly copied from the original notes of said survey on file in this office; that said field-notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the locus thereof.

I further certify that the plat thereof filed in the U. S. land office at Leadville is correct and in conformity with the foregoing field-notes.

ALBERT JOHNSON,
U. S. Surveyor-General of Colorado.

U. S. SURVEYOR-GENERAL'S OFFICE,
Denver, Colorado, January 28th, 1880.

(Endorsed:) 7. Case of the Fanchon placer. Field-notes. Filed in the U. S. land office at Leadville, Colorado. February 11, 1880. Jno. J. Henry, register.

LEADVILLE, COL.

To the Honorable COMMISSIONER OF THE GENERAL LAND OFFICE:

In the matter of the application of James A. Sawyer for a United States patent to the "Fanchon" placer claim, situate in Independence mining district, county of Lake, Colo.

242 Whereas, James A. Sawyer did, on the 14th day of February, 1880, file in the district land office of the United States at Leadville, Col., an application for U. S. patent for said placer claim, designated as Mineral Survey No. 660 and consisting of 118.92 acres; and whereas final entry was made on said Fanchon placer April 27, 1880, at the said Leadville land office;

Now, therefore, I, Ernst Hoelke, a citizen of the United States, over the age of twenty-one years, residing in and my post-office address being Lead-

ville, do, on this 23d day of April, 1881, enter this, my protest, against the issuing of a patent to the said James A. Sawyers for his claim upon the so-called "Fanchon" placer, as set forth in his said application as aforesaid, for the following reasons:

Because he has sought therein to obtain a U. S. patent for a part of the surface ground owned and occupied by this protestant and his co-owners as the Juniatta lode claim, which was located long prior to the location of the said "Fanchon" placer, and should have been excluded from said application for patent by said James A. Sawyer.

The abstract of title of said Fanchon placer shows—

Date of certificate of location, Nov. 12, 1879.

Date of record certificate of location, Nov. 13, 1879.

Date of relocation of same, Dec. 5th, 1879.

Date of record of same, Jan'y 12, 1880.

The abstract of title of the Juniatta lode herewith presented shows that it was legally located Sept. 19th, A. D. 1879. The lode is a genuine fissure vein, and was discovered by its outcrop which juts out of the ground in many places, enabling the course of the vein to be easily traced. Before and since the time of its location no part of the Juniatta claim
243 has or had been used for placer purposes.

The owners are aware of the fact that the acts of Congress regarding lodes exempt all known lodes from a placer patent. Hence they did not consider it necessary to adverse the application for U. S. patent for said Fanchon placer claim.

On the 18th day of February, A. D. 1881, the said protestant and his co-owners applied for patent on said Juniatta lode claim in the U. S. land office at Leadville, as shown by plat of survey No. 1483, approved by the sur. gen'l of Colorado. April 18th, 1881, said James A. Sawyer filed an adverse against said application for the "Fanchon" placer claim, claiming therein that the surface ground, and veins, lodes, or deposits contained therein of the area in conflict, as shown by adverse plat filed with said adverse, were the property of said Sawyers, being a part of the said Fanchon placer.

This protestant, for himself and his co-owners, therefore asks that said Juniatta lode, sur. 1483, be excluded from the ground to be patented to said "Sawyers" as the "Fanchon" placer, and further prays that the hon. Com. of the General Land Office direct the register and receiver of said Leadville land office to dismiss the said adverse claim of said Sawyers against said Juniatta lode claim, it not being an adverse contemplated by the law, either in intent or letter, and that this protestant and his co-owners be allowed to make final entry on said lode claim application, no other adverse having been filed.

ERNEST HOELKE.

245 STATE OF COLORADO,
County of Lake:

On this 23d day of April, A. D. 1881, before me, the subscriber, a notary public in and for said county, personally appeared the above named Ernest Hoelke, who being first duly sworn, saith that he is the protestant named in the foregoing protest above subscribed by him.

That he has read the same and knows the contents thereof, and that the

same is true in substance and in fact, and that the said protest is made in good faith.

ERNST HOELKE.

Sworn and subscribed before me this 23d day of April, A. D. 1881.

[SEAL.] ALBERT B. JONES,
Notary Public.

STATE OF COL.,
County of Lake, ss:

Dr. J. H. Heron, being duly sworn, deposes and says that he is a citizen of the United States, over the age of twenty-one years, and is one of the owners of the Juniatta lode claim; that he has carefully read the foregoing protest and knows the contents thereof, and that the same is true in substance and in fact; that he has been frequently on the ground in question, and that he knows that it has never been used for placer purposes.

J. H. HERON.

Subscribed and sworn to before me this 23d day of April, 1881.

246 [SEAL.] ALBERT B. JONES,
Notary Public.

In the matter of the protest of Ernest Hoelke and others against the issuance of U. S. patent for the "Fanchon" placer claim. Before the hon. Commissioner of the General Land Office.

Brief and argument for protestants.

James A. Sawyers has applied for U. S. patent for the "Fanchon" placer, which covers a portion of the Juniatta lode claim, and in said application has wilfully concealed the existence of said lode claim for the purpose of defrauding the owners thereof of their surface rights and all veins or lodes in said ground, and has thereby attempted to perpetrate a fraud upon the Gov. of the U. S.

The owners of the "Juniatta" lode claim are entitled by the statutes to 1,500 linear feet and 150 feet on each side of the center of the veins. Its existence as a genuine fissure vein is shown by the numerous affidavits accompanying this protest. They, the owners, are in need of all the timber on said surface ground for the convenient working of the tunnels and shafts now being constructed by them on said lode. They have been informed and believe that said Sawyer, the applicant, intends to take away all of said timber from said surface ground as soon as patent is issued on said "Fanchon" placer.

The said Sawyer has adversed the said "area in conflict" on the ground that he had already entered the land under his application for a placer patent, thereby showing his intention to interfere with the rights
247 of the owners of the Juniatta lode as allowed by § 2333, sec. 11, May 10, '72.

Therefore, the hon. Com. of the Gen. Land Office is respectfully asked to exclude said lode claim in its full extent from the patent to be issued for the said "Fanchon" placer.

The statutes have allowed (with the restriction of the laws of the State

of Colo.) locators of lodes or veins 150 ft. on each side of the center of the vein and 1,500 linear ft. along the course thereof; it is the intent plainly of said sec. 2333 to give precedence to lode locations.

The adverse by said Sawyers against the application of the owners of the Juniatta lode claim for a patent is not within the letter and spirit of the law.

Enough proof had been furnished the surveyor gen. of Colo. to satisfy him as to the existence of the Juniatta lode, and he accordingly approved the survey of the same over the "Fanchon" placer, the survey of which had been approved by him at a prior date. For these reasons it is respectfully asked that the hon. Com. of the General Land direct the register and receiver of the Leadville land office to dismiss said adverse claim and allow the final entry of the application of E. Hoelke et al. for the Juniatta lode.

If the Commissioner is not satisfied as to the facts in the case from the affidavits submitted, the request is made that a hearing may be ordered before the register and receiver at Leadville to determine as to the same.

All of which is respectfully submitted.

J. S. JONES,
Att'y for E. Hoelke et al.,
248 *Protestants against "Fanchon" Placer.*

P. O. BOX 769, LEADVILLE.

STATE OF COLORADO,
County of Lake, ss:

W. S. Vanderhoff, being duly sworn, deposes and says that he is a citizen of the United States over the age of twenty-one years; that he has no interest in the Juniatta lode claim; that he has been working on it as an employer of its owners for over two years; that it is a well-defined fissure vein over 18 ft. in width between granite walls; that it contains silver ore in place; that no portion of it has ever been used for placer purposes; that the owners of the Juniatta lode has always been in actual possession of said lode since its location, and that they have spent a large amount of money in developing the same by tunnels and shafts 350 feet in length and depth.

W. S. VANDERHOFF.

Sworn to and subscribed before me this 25th day of April, A. D. 1881.
[SEAL.] ALBERT B. JONES,
Notary Public.

STATE OF COLORADO,
County of Lake:

249 F. L. Mollin, being duly sworn, deposes and says that he is a citizen of the United States, over the age of twenty-one years; that he is well acquainted with the Juniatta lode claim located in Independence mining district, county of Lake, State of Colo.; that he has no interest whatever in the property; that the Juniatta vein is a well-defined fissure of great width between granite walls; that it can be clearly traced by its outcroppings; that wherever worked upon it shows mineral in place,

and that the vein is in the center of the claim, each of the side lines being 150 feet from the middle of the vein, and that no part of the said claim has ever been worked as a placer claim.

F. L. MOLLIN.

Subscribed and sworn to before me this 23d day of April, A. D. 1881.
[SEAL.] ALBERT B. JONES,
Notary Public.

STATE OF COLORADO, .
County of Lake, ss:

R. N. Cunningham, being duly sworn, deposes and says that he is a citizen of the United States, over the age of twenty-one years; that he is well acquainted with the Juniatta lode claim, located in Independence mining district, county of Lake, State of Col.; that he is not interested in the same; that the Juniatta vein is a well-defined fissure 18 ft. wide between granite walls, and that wherever opened or worked upon it
250 shows mineral in place, silver and iron, and that the vein is in the center of the claim, each of the side lines being 150 ft. from the middle of the vein, and that no part of said claim has ever been worked as a placer claim in any manner whatsoever.

R. N. CUNNINGHAM.

Subscribed and sworn to this 22d day of April, A. D. 1881, before me, a notary public in and for said county of Lake, State of Colo.
[SEAL.] ALBERT B. JONES,
Notary Public.

(Endorsed:) Protest against issuance of patent to "Fanchon" placer claim by E. Hoelke et al. U. S. land office, Leadville, Col. Filed this 27th day of April, A. D. 1881. Jno. J. Henry, register.

EXHIBIT D.—*R. H. B., Examiner.*

[H. K. S.—H. F. C.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 24, 1883.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of the papers in the matter of Leadville, Colorado, mineral entry No. 285, for the claim of James A. Sawyer upon the "Stinson" placer, is a true and literal exemplification from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and
251 caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[Seal U. S., Gen. Land Office.] N. C. MCFARLAND,
Commissioner of General Land Office.

UNITED STATES LAND OFFICE,
Leadville, Colorado, April 30th, 1880.

Hon. COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.:

SIR: I have the honor to transmit herewith the papers in the case of mineral entry No. 285, Stinson placer claim.

Very respectfully, your ob'd't servant,

WM. K. BURCHINELL, *Receiver.*

(Endorsed:) U. S. land office, Leadville, April 30, 1880. Receiver transmits papers in mineral entry No. 285. No plat to date, May 10th, 1880.

Survey No. 661. District No. 3.

Transcript of field-notes of the survey of the claim of J. A. Sawyer et al. upon the Stinson placer in California mining district, Lake County, Colorado, surveyed by Henry D. Bates, U. S. deputy surveyor.

Survey began December 15th, 1879, and completed December 24th, 1879.

252 Beginning at cor. No. 1, a pine post 4″ x 4″ x 4′, set two feet deep and marked 1 x 661 and 1 x 660, being the same as the cor. No.
Feet. *Feet.* 1 of the Fanchon placer, U. S. survey No. 660, A. J. Sawyer et al. applicants; thence variation in all cases being 15° east, N. 75° 55′ W.

1,295.7 To cor. No. 2, a pine post 4″ x 4″ x 4′, marked 2 x 661 and 7 x 660, being the same as cor. No. 7 of the Fanchon placer, U. S. survey 660, from which a pine tree, 8″ in diam., blazed and marked B. T. 2 x 661 and 7 x 660, bears S. 43° 45′ W. 6′.5, and a pine tree, 10″ in diam., blazed and marked B. T. 2 x 661 and 7 x 660, bears S. 62° E. 12′.3; thence N. 5° 00′ E.

665.0 To cor. No. 3, a pine post 4″ x 4″ x 4′, set 2 ft. deep and marked 3 x 661, from which a pine tree, 14″ in dia., blazed and marked B. T. 3 x 661, bears N. 34° 42′ E. 11′.8, and a pine tree, 12″ in diam., blazed and marked B. T. 3 x 661, bears S. 64° 04′ W. 16′.8; thence N. 70° 10′ E.

1,910.0 To cor. No. 4, a pine post 4″ x 4″ x 4′, marked 4 x 661, from which a pine tree, 16 in diam., blazed and marked B. T. 4 x 661, bear S. 29° 45′ W. 2′.3, and a pine tree, 12″ in dia., blazed and marked B. T. 4 x 661, bears N. 63° 30′ E. 6′.5; thence S. 75° 00′ E.

1,046.2 To cor. No. 5, a pine post marked 5 x 661, being
253 4″ x 4″ x 4′ in dimensions and set two feet deep; thence S. 32° 49′ E. 1,025′.75 to the N. side line of the Tidal Wave Lode 1,328′.45, to the S. side line of the Tidal Wave Lode, and,

2,545.1 To cor. No. 6, a pine post 4″ x 4″ x 4′, marked 4 x 661, and set 2 feet deep; thence S. 15° 00′ W.

540.0 To cor. No. 7, a pine post 4″ x 4″ x 4′, marked 7 x 661, and set 2 feet deep; thence N. 56° 00′ W.

1,689.1 To cor. No. 8, a pine post 4″ x 4″ x 4′, marked 4 x 661, and set 2 feet deep; thence N. 76° 00′ W.

1,492.0 To cor. No. 1, the place of beginning, containing 124.253 acres, more or less, exclusive of the conflict with the Tidal Wave Lode, which is as follows:

Beginning at the intersection of line 5–6, with the N. side line of the Tidal Wave; thence S. 49° 31′ W. 820′.2; thence S. 40° 29′ E. 300′; thence N. 49° 31′ E. 779.8; thence N. 32° 49′ W. 302′.7; to the place of beginning, containing 5.51 acres.

From cor. No. 1, the S. W. cor. sec. 18, T. 9 S., R. 80 W., bears S. 1° 35′ 05.6″ W. 1,688.17 feet. From cor. No. 2, a prominent m't'n peak, name unknown, bears N. 55° 30′ W., and another prominent peak, but name also unknown, bears N. 32° 30′ W. No mountain peaks were visible from any other corners.

From cor. No. 6, the east ¼ cor. sec. 18, T. 9 S., R. 80 W., bears N. 54° 08′ 20.″3 E. 2,760′.79.

Wherever no bearing trees are mentioned from the different
254 corners it was impracticable to take any.

The improvements on this claim consist of a cabin, shaft, and pits, as shown upon the plat and more particularly located and described as follows:

From cor. No. 1 a log cabin 14′ x 20′ bears N. 49° 35′ E. 145 ft.; a pit 4′ x 7′ x 9′.5 bears N. 47° 10′ W. 128 ft.; a shaft 76 ft. deep, and 3′ x 5′ in the clear, well timbered, bears N. 22° 45′ E. 247.0 ft., and a pit 4′ x 10′ x 11′ deep bears N. 87° 10′ E. 368.0 ft. The value of the said improvements, together with the labor expended upon the said claim by the claimants and their grantors, is not less than five hundred dollars ($500.00). In my opinion the actual cost of the same is not less than six hundred dollars ($600.00).

There are no known lodes upon the above-described placer claim. The eastern portion of the claim forms a part of the N. W., the S. W., and the S. E. quarters of section 18, T. 9 S., R. 80 W., and the remainder lies west of the town line.

The instrument used in this survey was an engineer's transit.

List of the names of individuals employed to assist in running, measuring, and marking the lines and corners described in the foregoing field-notes of the survey of the claim of J. A. Sawyer et al., upon the Stinson placer, in California mining district, Lake County, Colorado:

(S'g'd) FRANK KINGSLEY.
WM. GODFREY.

255 We hereby certify that we assisted Henry D. Bates, U. S. deputy mineral surveyor, in surveying the exterior boundaries and marking the corners of the claim of J. A. Sawyer et al., upon the Stinson placer, in California mining district, Lake County, Colorado, and that said survey has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according to the instructions furnished by the surveyor-general.

(S'g'd) FRANK KINGSLEY.
WM. GODFREY.

Subscribed and sworn to by the above-named persons before me this 14th day of January, 1880.

[SEAL.] JAMES L. HODGES,
Notary Public.

I, Henry D. Bates, deputy U. S. mineral surveyor, do solemnly swear that, in pursuance of an order from William L. Campbell, surveyor-general of the public lands in the State of Colorado, bearing date the 19th day of November, 1879, and in strict conformity to the laws of the United States and instructions furnished by said surveyor-general, I have faithfully surveyed the claim of J. A. Sawyer et al., upon the Stinson placer lode, in California mining district, Lake County, Colorado, and do further solemnly swear that the foregoing are the true and original field-notes of such survey, and that the improvements are as therein stated.

(Sig.) HENRY D. BATES,
U. S. Deputy Mineral Surveyor.

Subscribed by said Henry D. Bates, U. S. deputy mineral surveyor, and sworn to before me this 14th day of January, 1880.

[SEAL.] JAMES L. HODGES,
Notary Public.

I certify that the foregoing transcript of the field-notes of the
256 survey of the mining claim of J. A. Sawyer et al., situate in California mining district, county of Lake and State of Colorado, has been correctly copied from the original notes of said survey on file in this office; that said field-notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the locus thereof; and that the value of labor and improvement upon the said mining placer claim placed thereon by said claimant or his grantors is not less than five hundred dollars, as sworn to by the deputy surveyor, and that said improvements consist of cabin, shaft, and pits.

I further certify that the plat thereof filed in the U. S. land office at Leadville is correct and in conformity with the foregoing field notes.

ALBERT JOHNSON,
U. S. Surveyor-General of Colorado.

U. S. SURVEYOR-GENERAL'S OFFICE,
Denver, Colorado, January 28th, 1880.

(Endorsed:) 7 Case of the Stinson placer. Field notes. Filed in the U. S. land office at Leadville, Colorado, February 11, 1880, Jno. J. Henry, register.

Proof of posting notice and diagram on the claim.

STATE OF COLORADO,
County of Lake, ss:

257 Wm. Godfrey and J. F. Anderson, each for himself and not one for the other, being first duly sworn according to law, deposes and says that he is a citizen of the United States, over the age of twenty-one years, and was present on the 10th day of February, A. D. 1880, when a plat representing the Stinson placer claim, and certified to as correct by the United States surveyor-general of Colorado and designated by him as lot No. 661, together with a notice of the intention of J. A. Sawyer to apply for a patent for the mining claim and premises so platted, was posted in a con-

spicuous place upon said mining claim, to wit: Upon the south side of the cabin, which is in the southwest portion of the placer claim, where the same could be easily seen and examined, the notice so conspicuously posted upon said claim being in words and figures as follows, to wit:

Notice of the application of J. A. Sawyer for a United States patent.

Notice is hereby given that in pursuance of chapter six of title thirty-two of the Revised Statutes of the United States, J. A. Sawyer, claiming 124.253 acres lying and being situated within the California mining district, County of Lake and State of Colorado, has made application to the United States for a patent for the said mining claim, which is more fully described as to metes and bounds by the official plat herewith posted and by the field notes of survey thereof, now filed in the office of the register of the district of lands, subject to sale at Leadville, Colorado, which field notes of survey describe the boundaries and extent of said claim on the surface with magnetic variation at 15° east as follows, to wit:

Beginning at cor. No. 1, a pine post 4″ x 4″ x 4″, set 2 feet deep,
258 and marked 1–661 and 1–660, being the same as the cor. No. 1 of the Fanchon placer, U. S. Sur. No. 660, J. A. Sawyer; thence N. 75° 55′ W. 1295.7 feet to cor. No. 2, a pine post 4″ x 4″ x 4′, marked 2–661 and 7–660, bears S. 43° 45′ W. 65 feet, and a pine tree 10″ in dia., blazed and marked B. T 2–661 and 7–660, bears S. 62° E. 12.3 feet.

Thence N. 5° E. 665 feet to cor. No. 3, a pine post 4″ x 4″ x 4′, set 2 feet deep, and marked 3–661, from which a pine tree 14″ in dia., blazed and marked B. T. 3–661, bears N. 34° 42′ E. 11.8′, and a pine tree 12″ in dia., blazed and marked B. T. 3–661, bears S. 64° 04′ W. 16.8 feet.

Thence N. 70° 10′ E. 1,910 feet to cor. No. 4, a pine post 4″ x 4″ x 4′, marked 4–661, from which a pine tree, 16″ in dia., blazed and marked 13 T. 4–661, bears S. 29° 45′ W. 2.3 feet, and a pine tree 12″ in dia., blazed and marked B. T. 4–661, bears N. 63° 30′ E. 6.5 feet.

Thence S. 75° E. 1,046.2 feet to cor. No. 5, a pine post marked 5–661, being 4″ x 4″ x 4′ in dimensions, and set 2 feet deep.

Thence S. 32° 49′ E. 1,025.75 feet to the N. side line of the Tidal Wave lode, 1,328.45 feet to the S. side line of the Tidal Wave lode, and 2,545.1 feet to cor. No. 6, a pine post 4″ x 4″ x 4′, marked 4–661, and set 2 ft. deep.

Thence S. 15° W. 540 feet to cor. No. 7, a pine post 4″ x 4″ x 4′, marked 7–661, and set 2 feet deep.

Thence N. 56° W. 1,689.1 feet to cor. No. 8, a pine post 4″ x 4″ x 4′, marked 4–661, and set 2 feet deep.

Thence N. 76° W. 1,492 feet to cor. No. 1, the place of beginning, containing 124.253 acres, more or less, exclusive of the area in con-
259 flict with the Tidal Wave lode, which is as follows: Beginning at the intersection of line 5–6 with the N. side line of the Tidal Wave lode.

Thence S. 49° 31′ W. 820.2 feet.

Thence S. 40° 29′ E. 300 feet.

Thence N. 49° 31′ E. 779.8 feet.

Thence N. 32° 49′ W. 302.7 feet, the place of beginning, containing 5.51 acres.

From cor. No. 1, the S. W. cor. Sec. 18, T. 9 S., R. 8 W., bears S. 1° 35′ 05.6 W. 1,688.17 feet.

From cor. No. 2, a prominent mt. peak, name unknown, bears N. 55° 30′ W., and another prominent peak, but name also unknown, bears N. 32° 30′ W.

From cor. No. 6, the east ¼ cor: Sec. 18, T. 9 S., R. 80 W., bears No. 54° 08′ 20.5″ E. 2,760.79 feet. Whenever no bearing trees are mentioned from the different corners, it was impracticable to take any.

The said mining claim being of record in the office of the recorder of said county at Leadville, in the county and State aforesaid, the presumed general course or direction of the said Stinson placer being shown upon the plat posted herewith as near as can be determined from present development, this claim being for 124.253 acres, as shown upon the official plat posted herewith, the said mining premises hereby sought to be patented being bounded on the south by the Fanchon placer mining claim. Others, if any, are unknown.

Any and all persons claiming adversely the mining ground, vein, lode, premises, or any portion thereof so described, surveyed, platted, and applied for, are hereby notified that unless their adverse claims are
260 duly filed as according to law, and the regulations thereunder, within sixty days from the date hereof, with the register of the United States land office at Leadville, in the State of Colorado, they will be barred, in virtue of the provisions of said statute.

J. A. SAWYER.

Dated on the ground, this 10th day of February, A. D. 1880.

Witness:

WM. GODFREY.
J. F. ANDERSON.

Subscribed and sworn to before me this 10th day of February, A. D. 1880, and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit and notice were read by each of them before their signatures were affixed thereto and the oath made by them.

A. S. WESTON,
Notary Public.

(Endorsed:) Case of the Stinson placer. Proof of posting notice and diagram on claim. Filed in the U. S. land office at Leadville, Colorado, February 11, 1880; Jno. J. Henry, register.

Agreement of publisher.

The undersigned, publisher and proprietor of the Weekly Chronicle, a weekly newspaper, published at Leadville, county of Lake, and State of Colorado, does hereby agree to publish a notice, dated United States land office, at Leadville, Colorado, February, 1880, required by Chapter six, of Title thirty-two, Revised Statutes of the United States, of the in-
261 tention of J. A. Sawyer to apply for a patent for his claim on the Stinson placer, situated in California mining district, county of Lake, State of Colorado, and to hold the said J. A. Sawyer alone responsible for the amount due for publishing the same. And it is hereby expressly

stipulated and agreed that no claim shall be made against the Government of the United States or its officers or agents for such publication.

Witness my hand and seal, this — day of February, A. D. 1880.

CHRONICLE PUB. CO.
C. S.

Witness:

(Endorsed:) 5 Case of the Stinson placer. Agreement of publication. Filed in the U. S. land office at Leadville, Colorado, February 11, 1880; Jno. J. Henry, register.

Proof that plat and notice remained posted on claim during time of publication.

STATE OF COLORADO,
County of Lake, ss:

J. A. Sawyer, being first duly sworn according to law, deposes and says, that he is claimant (and co-owner with, &c.,) in the Stinson placer mining claim, situated in the California mining district, Lake County, Colorado, the official plat of which premises together with the notice of intention to apply for a patent therefor was posted thereon, on the tenth day of February, A. D. 1880, as fully set forth and described in the affidavit
262 of William Godfrey and J. F. Anderson, dated the tenth day of February, A. D. 1880, which affidavit was duly filed in the office of the register, at Leadville, Colorado, in this case, and that the plat and notice so mentioned and described remained conspicuously posted upon said mining claim from the tenth day of February, A. D. 1880, until and including the twenty-sixth day of April, A. D. 1880, including the sixty days period during which notice of said application for patent was published in the newspaper.

JAMES A. SAWYER.

Subscribed and sworn to before me this twenty-sixth day of April, A. D. 1880; and I hereby certify that the foregoing affidavit was read to the said J. A. Sawyer previous to his name being subscribed thereto, and that deponent is a respectable person, to whose affidavit full faith and credit should be given.

A. S. WESTON,
Notary Public. [SEAL.]

(Endorsed:) Case of the Stinson placer. Form E. U. S. Mining Act, May 10, 1872. Proof that plat and notice remained posted on claim during notice of publication. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880; Jno. J. Henry, register.

Register's certificate of posting notice for sixty days.

U. S. LAND OFFICE
At Leadville, Col., April 27, 1880.

I hereby certify that the official plat of the Stinson placer was filed in this office on the — day of February, A. D. 1880, and that the attached

notice of the intention of J. A. Sawyer et al. to apply for a patent
263 for the mining claim or premises embraced by said plat and described in the field notes of survey thereof, filed in said application, was posted conspicuously in this office on the — day of February, A. D. 1880, and remained so posted until the twenty-sixth day of April, A. D. 1880, being the full period of sixty consecutive days as required by law; and that said plat remained in this office during that time, subject to examination, and that no adverse claim thereto has been filed.

JNO. J. HENRY,
Register.

(Endorsed:) Case of the Stinson placer. Form F. U. S. mining act. May 10, 1872. Register's certificate of posting notice for sixty days. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880; Jno. J. Henry, register.

Receiver's receipt.

(Duplicate to be given the purchaser.)

Mineral entry.
No. 285.
Lot No. 661.

U. S. LAND OFFICE
At Leadville, Col., April 27, 1878.

Received from James A. Sawyer the sum of three hundred and twelve 50-100 dollars, the same being in full for the surface area embraced by survey No. 661 in the ——— of section ———, in township No. ——— of range No. ———, meridian; said mineral claim or lot of land
264 being situate in California mining district, county of Lake, and State of Colorado, and known as the Stinson placer mining claim, embracing $124\frac{253}{1000}$ acres, as shown by said survey.
$312.50.

WILLIAM K. BURCHINELL,
Receiver.

(Endorsed:) Receiver's receipt. Case of the Stinson placer mining claim, lot No. 661, in T. R. in California mining district, Lake County, Colorado, claimed by James A. Sawyer.

Register's final certificate of entry.

Mineral entry.
No. 285.
Lot No. 661.

U. S. LAND OFFICE,
At Leadville, Col., April 27, 1880.

It is hereby certified that, in pursuance of the mining act of Congress, approved July 26, 1866, and the acts amendatory thereof, approved July 9, 1870, and May 10, 1872, James A. Sawyer, whose post-office address is Leadville, Colorado, on this day purchased that mineral claim or lot of land designated as survey No. 661, in the ——— of section ———, in

township No. ——— of range ——— meridian, situate, lying and being in the California mining district, in the county of Lake and State of Colorado, known as the Stinson placer mining claim, embracing ——— linear feet, with 124 253/1,000 acres of surface ground, as shown by said survey, for which the said James A. Sawyer have this day made payment to the receiver in full, amounting to the sum of three hundred and
265 twelve 50-100 dollars.

Now, therefore, be it known that upon the presentation of this certificate to the Commissioner of the General Land Office, together with the plat, survey, and description of said claim, a patent shall issue thereupon to the said James A. Sawyer if all be found regular.

JNO. J. HENRY,
Register.

(Endorsed:) Register's final certificate of entry. Case of the Stinson placer mining claim of James A. Sawyer upon the ———, being lot No. 661, in T. ——— of R. ———, California mining district, Lake County, Colorado, claimed by James A. Sawyer.

Affidavit of citizenship.

STATE OF COLORADO,
County of Lake, ss:

J. A. Sawyer, being first duly sworn according to law, deposes and says, that he is the applicant for patent for the Stinson placer mining claim, situated in California mining district, county of Lake, Colorado; that he is a native citizen of the United States, and is now a resident of Leadville, Colorado.

JAMES A. SAWYER.

Subscribed and sworn to before me this 10th day of February, A. D. 1880.

[SEAL.] A. S. WESTON,
Notary Public.

266 (Endorsed:) 2. Case of the Stinson placer. U. S. mining act, May 10, 1872. Affidavit of citizenship. Filed in the U. S. land office at Leadville, Colorado, February 11, 1880. Jno. J. Henry, register.

Certificate that no suit is pending.

STATE OF COLORADO,
County of Lake, ss:

I, Charles W. Taylor, clerk of the district court in and for Lake County, Colorado, do hereby certify that there is now no suit or action of any character pending in said court involving the right of possession to any portion of the Stinson placer mining claim, and that there has been no litigation beforee said court affecting the title to said claim, or any part thereof, for —— years last past other than what has been finally decided

in favor of J. A. Sawyer et al., applicants for a patent to said placer claim.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office in Leadville, Col., this 27 day of April, A. D. 1880.

CHAS. W. TAYLOR,
Clerk of the District Court, Lake County, Colorado.
[SEAL.] By WM. RAYMOND,
Deputy.

(Endorsed:) Case of the Stinson placer. Certificate that no suit
267 is pending. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880. Jno. J. Henry, register.

UNITED STATES LAND CFFICE,
Leadville, Col., May 18th, 1880.

Hon. COMMISSIONER GENERAL LAND OFFICE:

SIR: I have the honor to transmit herewith papers in the case of the Stinson placer, mineral entry No. 285, omitted in my letter of April 30, 1'80.

Very respectfully, your ob'd't serv't,
WM. K. BURCHINELL,
Receiver.

(Endorsed:) 1880. U S. land office, Leadville, May 18, 1880. Receiver transmits papers in case of Stinson placer, omitted in former letter. N. May 31, 1880.

Register's certificate of posting notice for sixty days.

UNITED STATES LAND OFFICE,
At Leadville, Col., April 27th, 1880.

I hereby certify that the official plat of the Stinson placer, designated by the surveyor-general as lot No. 661, was filed in this office on the eleventh day of February, A. D. 1880, and that the attached notice of the intention of J. A. Sawyer to apply for a patent for the mining claim or premises embraced by said plat, and described in the field notes of survey thereof, filed in said application, was posted conspicuously in this office on the fourteenth day of February, A. D. 1880, and re-
268 mained so posted until the twenty-sixth day of April, A. D. 1880, being the full period of sixty consecutive days during the period of publication as required by law, and that said plat remained in this office during that time, subject to examination, and that no adverse claim thereto has been filed.

———— ————,
Register.
WM. K. BURCHINELL,
Receiver.

(Endorsed:) Case of the Stinson placer. Register's certificate of posting notice for sixty days. Filed in the U. S. land office at Leadville, Colorado, Ap'l 27th, 1880. Wm. K. Burchinell, receiver.

Proof that no known veins exist in a placer mining claim.

STATE OF COLORADO,
County of Lake, ss:

Wm. Godfrey and J. F. Anderson, of the said county and State, being first duly sworn, each for himself, deposes and says, that he is well acquainted with the Stinson placer mining claim, embracing 124,253 acres, situated in the California mining district, in the county of Lake and State of Colorado, owned and worked by J. A. Sawyer, applicant for United States patent; that for many years he has resided near, and often been upon, the said mining premises, and that no known vein or veins of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper exist on said mining claim, or any part thereof, so far as he knows, and he verily believes that none exist thereon. And further, that he has
269 no interest whatever in the said placer mine, Stinson.

J. F. ANDERSON.
WM. GODFREY.

Subscribed and sworn to before me this 14th day of February, A. D. 1880.

[SEAL.] A. S. WESTON,
Notary Public.

(Endorsed:) Case of the Stinson placer. Form Q. U. S. mining act, May 10, 1872. Proof that no known veins exist in a placer mining claim. Filed in the U. S. land office at Leadville, Colorado, February 11, 1880, Jno. J. Henry, register.

Application for patent.

STATE OF COLORADO,
County of Lake, ss:

Application for patent for the Stinson placer mining claim.

To the REGISTER AND RECEIVER OF THE U. S. LAND OFFICE
at Leadville, Colorado.

J. A. Sawyer, being duly sworn according to law, deposes and says, that in virtue of a compliance with the mining rules, regulations, and customs, by himself, the said J. A. Sawyer, applicant for patent herein, has become the owner of, and is in the actual, quiet, and undisturbed possession of 124,253 acres of the Stinson placer for the convenient working thereof as allowed by local rules and customs of miners; said mineral claim and surface ground being situated in the California mining
270 district, county of Lake and State of Colorado, and be more particularly set forth and described in the official field-notes of survey thereof, hereto attached, dated 28th day of January, A. D. 1880, and in the official plat of said survey, now posted conspicuously upon said mining claims or premises, a copy of which is filed herewith. Deponent further states that the facts relative to the right of possession of himself to said

mining claim and surface ground, so surveyed and platted, are substantially as follows, to wit:

Said placer was located the 12th day of November, A. D. 1879, by J. A. Sawyer et al. Recorded the 13th of November, A. D. 1879, in book "Q," at page 234 of the records of said county of Lake. Relocated the 5th day of December, A. D. 1879, by J. A. Sawyer, W. Arens, T. H. Renus, A. M. Rucker, M. J. David, O. S. Crowther, P. Henderson, L. Rucker, recorder in book P, at page 464 of the records of said county of Lake.

Thereafter, as shown by the abstract of title, W. Arens, T. H. Reims, A. M. Rucker, M. J. David, O. S. Crowther, P. Henderson, and L. Rucker conveyed all of their right, title, and interest to J. A. Sawyer, which will more fully appear by reference to the copy of the original record of location and the abstract of title hereto attached and made a part of this affidavit; the value of the labor done and the improvements made upon said Stinson placer claim by himself and other locators being equal to the sum of five hundred dollars, and said improvements consist of a cabin shaft and pits, as shown upon the plat and described in the field-notes. In consideration of which facts and in conformity with the provisions of chapter six, of title thirty-two, of the Revised Statutes of the United States, ap-
271 plication is hereby made for and in behalf of said Stinson placer for a patent from the Government of the United States for the said Stinson placer mining claim and the surface ground so officially surveyed and platted.

JAMES A. SAWYER.

Subscribed and sworn to before me this 10th day of February, A. D. 1880. And I hereby certify that I consider the above deponent a creditable and reliable person; and that the foregoing affidavit to which was attached the field-notes of survey of the Stinson placer mining claim was read and examined by him before his signature was affixed thereto and the oath made by him.

[SEAL.] A. S. WESTERN,
Notary, Placer.

(Endorsed:) Case of the Stinson placer. Application for patent for mining claim. Applicant, A. D. 18—. Filed on the U. S. land office at Leadville, Colorado, February 11, 1880. Jno. J. Henry, register.

Proof that no known veins exist in a placer mining claim.

STATE OF COLORADO,
County of Lake, ss:

J. A. Sawyer, of the said county and State, being first duly sworn, each for himself, deposes and says, that he is well acquainted with the Stinson placer mining claim, embracing 124,253 acres, situated in the California mining district, in the county of Lake and State of Colorado,
272 owned and worked by J. A. Sawyer, applicant for United States patent; that for many years he has resided near, and often been upon, the said mining premises, and that no known vein or veins of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper

exist on said mining claim, or on any part thereof, so far as he knows, and he verily believes that none exist thereon. And further, that he is the applicant for a patent to the said placer mine, Stinson.

JAMES A. SAWYER.

Subscribed and sworn to before me this day of April, A. D. 1880.
[SEAL.] A. S. WESTON,
Notary Public.

(Endorsed:) Case of the Stinson placer. Form Q. U. S. mining act, May 10, 1872. Proof that no known veins exist in a placer mining claim. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880, Jno. J. Henry, register.

Statement and charge of fees.

STATE OF COLORADO,
County of Lake, ss:

J. A. Sawyer, being first duly sworn according to law, deposes and says that he is one of the applicants for patent for the Stinson placer, in California mining district, county of Lake, State of Colorado, under the provisions of the act of Congress approved May 10, 1872, and that in the prosecution of said application he has paid out the following amount, viz:

To the credit of the surveyor-general's office, $25.00 (twenty-five
273 dollars); for surveying, $75.00 (seventy-five dollars); for filing in the local land office, $10.00 (ten dollars); for publication of notice, $28.00 (twenty-eight dollars), and for the land embraced in his claim, $312.50 (three hundred and twelve and $\frac{50}{100}$ dollars). James A. Sawyer.

Subscribed and sworn to before me this twenty-sixth day of April, A. D. 1880.
[SEAL.] A. S. WESTON,
Notary Public.

(Endorsed:) Case of the Stinson placer. Form J. U. S. mining act, May 10, 1872. Statement and charge of fees. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880. Jno. J. Henry, register.

Affidavit of five hundred dollars improvements.

STATE OF COLORADO,
County of Lake, ss:

Wm. Godfrey and J. F. Anderson, of lawful age, being first duly sworn according to law, depose and say that they are acquainted with *the* the Stinson placer mining claim in California mining district, county and State aforesaid, for which J. A. Sawyer has made application for patent under the provisions of chapter six of title thirty-two, Revised Statutes of the United States, and that the labor done and the improvements made thereon by the applicant and his grantors exceed five hundred dollars in

value, and said improvements consist of a cabin, a shaft, and pits as shown upon the plat.

WM. GODFREY.
J. F. ANDERSON.

274 Subscribed and sworn to before me this 10th day of February, A. D. 1880.

[SEAL.] A. S. WESTON,
Notary Public.

(Endorsed:) 4. Case of the Stinson Placer. Affidavit of five hundred dollars improvements. Filed in the U. S. land office at Leadville, Colorado, February 11, 1880. Jno. J. Henry, register.

Register's certificate of posting notice for sixty days.

UNITED STATES LAND OFFICE,
At Leadville, Col., April 27th, 1880.

I hereby certify that the official plat of the Fanchon placer, designated by the surveyor-general as lot No. 660, was filed in this office on the eleventh day of February, A. D. 1880, and that the attached notice of the intention of J. A. Sawyer to apply for a patent for the mining claim or premises embraced by said plat, and described in the field notes of survey thereof filed in said application, was posted conspicuously in this office on the fourteenth day of February, A. D. 1880, and remained so posted until the twenty-sixth day of April, A. D. 1880, being the full period of sixty consecutive days during the period of publication as required by law; and that said plat remained in this office during that time, subject to examination, and that no adverse claim thereto has been filed.

———— ————, *Register.*
WM. K. BURCHINELL,
Receiver.

276 (Endorsed:) Case of the Fanchon placer. Register's certificate of posting notice for sixty days. Filed in the U. S. land office at Leadville, Colorado, Ap'l 27th, 1880. Wm. K. Burchinell, receiver.

Proof of publication.

STATE OF COLORADO,
County of Lake, ss:

C. C. Davis, being first duly sworn, deposes and says that he is the ———— of the Carbonate Weekly C'ronicle, a newspaper published at Leadville, in Lake County, in the State of Colorado; that the notice of the application for a patent for the Stinson placer mining claim, of which a copy is hereto attached, was first published in said newspaper in its issue dated the fourteenth of February, 1880, and was published in each (weekly) issue of said newspaper for ten consecutive weeks thereafter, the full period of sixty days, the last publication thereof being in the issue dated the twenty-fourth of April, 1880.

C. C. DAVIS.

Subscribed and sworn to before me this 27 day of April, A. D. 1880.

[SEAL.] A. S. WESTERN,
Notary Public.

Mining application No. 450.—United States land office.

277 LEADVILLE, COLO., *February* 11, 1880.

Notice is hereby given that J. A. Sawyer, whose post-office address is Leadville, Colorado, has this day filed his application for a patent for 124.253 acres of the Stinson placer, situated in California mining district, county of Lake and State of Colorado, and designated by the field-notes and official plat on file in this office as lot No. 661, which is described as follows, to wit:

Beginning at corner No. 1, being the same as corner No. 1 of the Fanchon placer, U. S. Survey No. 660, whence the southwest corner section 18, township 9 south, range 80° west, bears south 1° 35′ 05.6″ west, 1688.17 feet; thence north 75° 35′ west, 1295.7 feet to corner No. 2; thence north 5° east, 665 feet to corner No. 3; thence north 70° 10°, east, 1910 feet to corner No. 4; thence south 75° east, 1016.2 feet to corner No. 5; thence south 32° 49′ east, 2545.1 feet to corner No. 6; from which the east ¼ corner section 18, township 9 south, range 80 west, bears north 54° 08′ 29.5″ east, 2760.79 feet; thence south 15° west, 540 feet to corner No. 7; thence north 56° west, 1689.1 feet to corner No. 8; thence north 76° west, 1492 feet to corner No. 1, the place of beginning, containing 124.253 acres, exclusive of the area in conflict with the Tidal Wave lode, as follows: Beginning at the intersection of line 5 and 6 with the north side line of the Tidal Wave lode; thence south 49° 31′ west, 820.2 feet; thence south 40° 29′ east, 300 feet; thence north 49° 31′ east, 779.8 feet; thence north 32° 49′ west, 302.7 feet, the place of beginning, containing 5.51 acres. Magnetic variation 15° east. The location of this mine is recorded in the recorder's office of Lake County, in Book Q
278 of pre-emptions; the adjoining claim on the south, the Fanchon placer; others, if any, are unknown.

Any and all persons claiming adversely any portion of said Stinson placer mine or surface ground are required to file their adverse claim with the register of the United States land office at Leadville, in the State of Colorado, during the sixty days' period of publication hereof, or they will be barred by virtue of the provisions of the statute.

JNO. J. HENRY,
Register.
WM. K. BURCHINELL,
Receiver.

A. S. WESTON, *Att'y for Applicant.*

(First publication Feb. 14, 1880.)

(Endorsed:) Case of the Stinson placer. Form H. U. S. mining act. May 10, 1882. Proof of publication. Filed in the U. S. land office at Leadville, Colorado, April 27, 1880. Jno. J. Henry, register.

Abstract of title to the Stinson placer.

Book Q.
Page 464.
14891.

Relocation certificate Stinson placer.

Know all men by these presents:

That we, the undersigned, J. A. Sawyer, W. Arens, T. H. Reims, A. M. Rucker, M. J. David, O. S. Crowther, P. Henderson, and L. Rucker, of the

county of Lake, State of Colorado, claim by right of discovery and relocation the Stinson placer claim, containing 129 76–100 acres, situated in California mining district, in Lake County, State of Colorado, on the
279 divide between Colorado Gulch and Lake Creek, about six miles west of Leadville, Colorado, and is further described by metes and bounds as follows, to wit: Beginning at cor. No. 1, being the same as cor. No. 1 of the Fanchon placer; thence N. 75° 55′ W., 1295.7 feet to cor. No. 2, being the same as cor. No. 7 of the Fanchon placer.

Thence N. 5° 00′ E., 665.0 feet to cor. No. 3.
Thence N. 70° 10′ E., 1910.0 feet to cor. No. 4.
Thence S. 75° 00′ E., 1046 feet to cor. No. 5.
Thence S. 32° 49′ E., 2545.1 feet to cor. No. 6.
Thence S. 15° 00′ W., 540.0 feet to cor. No. 7.
Thence N. 56° 00′ W., 1689.1 feet to cor. No. 8.
Thence N. 76° 00′ W., 1492.0 feet to cor. No. 1,

the place of beginning. From cor. No. 2 a prominent m't'n peak, name unknown, bears N. 55° 30′ W., and another peak, name unknown, bears N. 32° 30′ W., no peaks being in sight from any other corners. Date of original certificate, Nov. 12, 1879. Recorded in Lake County records, Book Q. P. (234), Nov. 13, 1879. Date of relocation, Dec. 5, 1879.

J. A. SAWYER.
W. ARENS.
T. H. REIMS.
A. M. RUCKER.
M. J. DAVID.
O. S. CROWTHER.
P. HENDERSON.
S. RUCKER.

Recorded January 12th at 11.30 a. m.

Location certificate, Stinson placer claim.

Book Q.
Page 234.
11924.

Know all men by these presents:

That we, J. A. Sawyer, W. Arens, T. H. Rermss, A. M. Rucker, M. J. David, O. S. Crowther, P. Henderson, L. Rucker, of the county of Lake, State of Colorado, claim by right of discovery and location the Stin-
280 son placer claim, containing 130.03 acres, situated on the divide between Colorado Gulch and Lake Creek, about six miles west of Leadville, Colorado, and described as follows, to wit: Beginning at corner No. 1, and being the same as corner No. 1, Fanchon placer, thence N. 76° 18′ W., 1266.05 feet to corner No. 2, the same as corner No. 2, Fanchon placer; thence N. 5° E., 658 feet to corner number 3; thence N. 77° E., 79 feet to corner No. 4; thence N. 65° E., 1122 feet to corner No. 5; thence S. 75° E., 1041 feet to corner No. 6; thence S. 29° E., 1857 feet to corner No. 7; thence S. 57° E., 359 feet to corner No. 8; thence S. 29° E., 346 feet to corner No. 9; thence S. 15° W., 540 feet to corner No. 10, thence N. 56° W., 1700 ft. to corner No. 11; thence N. 76° W., 1500 feet to corner number 1, to the place of beginning. From corner No. 3, Fanchon

placer, Mt. Sheridan bears S. 71° 22′ E.; peak on Mosquito bears N. 76° 33′ E. (no peaks in sight) from the corners of this placer. Located June 10, 1879. Date of certificate, November 12th, 1879. Recorded Nov. 13th, 1879, at 9 a. m.

18793. Bk. 38, pg. 231. W. Arens, T. H. Raines, Percival Henderson, A. M. Rucker, M. J. David ("no sig."), O. S. Crowther, L. Rucker ("no sig."), to J. A. Sawyer.—Quitclaim deed, dated Feb. 2d, 1880. Ack. Feb. 2d, 1880. Record Mar. 22d. Consideration, 500.00. Conveys Stinson placer & other property.

20064. Mark J. David to J. A. Sawyer.—Quitclaim deed d't'd Apr. 13, 1880. Ack. Apr. 13, 1880. Record Apr. 15, 1880. Consideration, 10.00. Conveys his interest in the Stinson placer & other property

281 20179. Louis Rucker to J. A. Sawyer.—Quitclaim deed d't'd Mar. 31st, 1880. Ack. Apr. 1st, 1880. Record. Apr. 17, 1880. Consideration 10.00 conveys 1st p'ty's interest in the Stinson placer & other property.

I, Joseph H. Wells, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct abstract of title to the Stinson placer, and sets forth all transfers to or from the within-named parties of said placer, as the same appears of record in my office.

Witness my hand and official seal this the 17th day of April, A. D. 1880, at 6 p. m.

JOS. H. WELLS,
Clerk and Recorder.

[SEAL.] GEO. F. WOLVERTON,
Deputy.

(Endorsed:) Case of the Stinson placer. Abstract of title. Filed in the U. S. land office, at Leadville, Colorado, April 27, 1880. Jno. J. Henry, register.

282 EXHIBIT E.—*R. H. B., Examiner.*

"Iron Silver Mining Company."—Certificate of Incorporation.

STATE OF NEW YORK,
City and County of New York, ss:

We, William H. Stevens, George D. Roberts, George B. Robinson, and Richard C. McCormick, citizens of the United States, and residents of the State of New York, hereby associate together for the purpose of making a corporation under the laws of the State of New York, authorizing the formation of corporations for mining and other purposes, and in compliance with the provisions of said laws, we do hereby state and certify:

First. That the corporate name of this company is and shall be the "Iron Silver Mining Company."

Second. That this company is formed for the objects and purposes of mining gold, silver, copper, and other ores and minerals, and separating the metals therefrom.

Third. That the amount of the capital stock of this company is and shall be ten million dollars, divided into five hundred thousand shares of the par value of twenty dollars each.

Fourth. That the existence of this company shall continue for
283 the term of fifty years.

Fifth. That the number of trustees who shall manage the concerns and business affairs of this company is, and shall be, nine, and George D. Roberts, Richard C. McCormick, James D. Smith, Steven D. White, Charles L. Perkins, and Luther R. Marsh, all of whom are citizens of the United States and residents of the State of New York, and William H. Stevens, a resident of Detroit, Michigan, and George B. Robinson, a resident of Leadville, Colorado, and Jonas H. French, a resident of Boston, Massachusetts, are citizens of the United States, are the names of the persons who shall be such trustees for the first year.

Sixth. That the principal office and the principal place of business of this company shall be located in the city and county of New York, State of New York, but the mining operations and the separating of the metals from ores are to be carried on out of this State, viz, in Lake County, State of Colorado, and elsewhere in said State.

Seventh. That said company shall have power to purchase mines and other property necessary for carrying on its business and issue full paid stock in payment therefor.

In witness whereof we have hereto set our hands and seals this second day of March, one thousand eight hundred and eighty.

WILLIAM H. STEVENS. [SEAL.]
G. D. ROBERTS. [SEAL.]
284 GEO. B. ROBINSON. [SEAL.]
R. C. MCCORMICK. [SEAL.]

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 2nd day of March, A. D. 1880, before me, William H. Clarkson, a notary public of the State of New York, in and for the county of New York, duly commissioned and sworn, and dwelling in said city of New York, personally came William H. Stevens, George D. Roberts, George B. Robinson, and Richard C. McCormick, to me personally known to be the same persons described in, and who executed the foregoing instrument, who signed and sealed the same in my presence, and acknowledged to me that they had executed the same as their free act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 2nd day of March, A. D. 1880.

[SEAL.] WILLIAM H. CLARKSON,
Notary Public, State of New York, New York,
117 *Broadway, N. Y. City.*

(Endorsed:) The Iron Silver Mining Company certificate of incorporation. State of New York. Office of the secretary of State. Filed March 4, 1880.

ANSON S. WOOD,
Deputy Secretary of State.

285 STATE OF NEW YORK,
City and County of New York, ss:

I, William A. Butler, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have com-

pared the preceding with the original certificate of incorporation of "The Iron Silver Mining Company," on file in my office, and that the same is a correct duplicate therefrom, and of the whole of such original. Endorsed, filed third March, 1880.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 3d day of March, 1880.

WILLIAM A. BUTLER, *Clerk.*

STATE OF NEW YORK,
Office of the Secretary of State, ss:

I have compared the preceding with the duplicate original certificate of incorporation of the Iron Silver Mining Company, with acknowledgment thereto annexed, filed in this office on the fourth day of March, 1880, and do hereby certify the same to be a correct transcript therefrom, and of the whole of said duplicate original.

286 Witness my hand and the seal of office of the secretary of State, at the city of Albany, this ninth day of March, one thousand eight hundred and eighty.

[STATE SEAL.]

ANSON S. WOOD,
Deputy Secretary of State.

Filed at 10 a. m., Mar. 22, 1880.

JOS. H. WELLS, *Recorder.*
E. T. WOLVERTON, *Deputy.*

STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of cert. of incorporation, No. 18803, as appears on file in my office.

Witness my hand and official seal this 14th day of Feb'y, A. D. 1884.

[SEAL.]

F. M. REARDON,
Clerk and Recorder.

(Endorsed:) Copy of certificate of incorporation of Iron Silver Mining Co.

287 EXHIBIT F.—*R. H. B., Examiner.*

No. 6319.
Book O.
Page 176.

STATE OF COLORADO,
Lake County, ss:

The Paxton lode, located by James A. Sawyers on the 25th day of July, A. D. 1879, claim 1,500 feet horizontal linear measure, 1,290 on the east side and 200 feet on the west side of Discovery shaft, and 288 feet on the south side of Discovery shaft and 12 feet on the north side of Discovery shaft. Said Paxton lode claim is marked and described by a substantial stake at each of the four corners, also a stake at the center of each side line, is situated in the California mining district, Lake County, State of Colorado, and described by metes and bounds as follows: Beginning at

corner No. 1, which bears E. 36° N. 200 feet from S. W. cor. of the Ferguson lode, and 55° W. from Spruce pine tree 16 in. diam., marked B. T. P. L.; thence east 36° N. 330 feet to cor. No. 2 N. line; thence E. 22° N. 1,170 feet to cor. No. 3, N. E. cor.; thence south 55° E. 330 feet to cor. No. 4, S. E. cor.; thence W. 22° S. 1,170 feet to cor. No. 5, S. line; thence W. 36° S. 330 feet to — No. 6, S. W. cor.; thence N. 55° W. 300 feet to cor. No. 1, being the point of beginning. Said claim is in Buffalo Gulch, west of the Arkansas River, and are the surface boundaries of above-named lode claim, more fully and clearly described in the field-notes of the surveyor accompanying, and made part of this certificate. The individual interest of the several locators is as follows, to wit:

Survey made July 25th, 1879, by Morgan Crane, U. S. mineral land surveyor.

Recorded July 28th, 1879, at 2 o'clock p. m.

JAS. H. WELLS,
Recorder.

288 E. T. WOLVERTON,
Deputy.

STATE OF COLORADO,
Lake County, ss:

I, J. W. Jacque, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of location cert'f. of "Paxton" lode No. 6319, as appears of record in my office, in Book O, page 176.

Witness my hand and official seal this 23d day of Feb'y, A. D. 1884.

[SEAL.] F. M. REARDON,
Clerk and Recorder.

(Endorsed:) Copy. Location Paxton lode.

EXHIBIT G.—*R. H. B., Examiner.*

No. 6318.
Book O.
Page 175.

STATE OF COLORADO,
Lake County, ss:

The Ferguson lode, located by James A. Sawyers on the 24th day of July, A. D. 1879. Claim 1,500 feet horizontal linear measure, 205 feet on the west side and 1,295 feet on the east side of Discovery shaft, and 160 feet on the south side of Discovery, and 160 feet on the north side of Discovery, said Ferguson claim is marked and described by a
289 substantial stake at each of the four corners, and also a stake at the center of each side line, is situated in the California mining district, Lake County, State of Colorado, is described by metes and bounds as follows, to wit: Beginning at corner No. 1, which is the same as cor. No. 1 N. E. cor. of the Lizzie Bell lode, same being of record; thence S. 11° E. 300 feet to cor. No. 2 N. E.; thence W. 36° S. 750 feet to cor. No. 3 S. line centre stake; thence W. 36° S. 750 feet to co. No. 4 S. W. cor.; thence S. 11° W. 300 feet to cor. No. 5 N. W. cor; the E. 36° N. 750 feet to cor. No. 6 N. line centre stake; thence E. 36° N. 750 feet to

cor. No. 1, being the joint of beginning. Said claim is in Buffalo Gulch, west of Arkansas River, and are the surface boundaries of above-named lode claim, more fully and clearly described in the field-notes of the surveyor accompanying and made part of this certificate.

The individual interest of the several locators is as follows, to wit:

Survey made July 24th, 1879, by Morgan Crane, U. S. mineral land surveyor.

Recorded July 28th, 1879, at 2 o'clock p. m.

JOS. H. WELLS,
Recorder.
E. T. WOLVERTON,
Deputy.

STATE OF COLORADO,
County of Lake, ss:

289½ I, J. W. Jacque, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of location cert'f. of "Ferguson" lode, No. 6318, as appears of record in my office, in Book O, page 175.

Witness my hand and official seal, this 23d day of Feb'y, A. D. 1884.

[SEAL.] F. M. REARDON.
Clerk and Recorder.

(Endorsed:) Copy location Ferguson lode. G. Exhibit G. R. H. B., Examiner.

EXHIBIT H.—*R. H. B., Examiner.*

No. 5523.
Book O.
Page 72.

STATE OF COLORADO,
Lake County, ss:

Know all men by these presents that I, the undersigned, have this 28th day of June, 1879, claimed by right of location fifteen hundred feet linear and horizontal measurement in length, and three hundred feet in width, on the Andrew Jackson lode along the vein thereof, with all its spurs, dips, variations, and angles, together with the amount of surface necessary for working the same, and allowed by law; 845 feet of said lode so located lying and being S. 88° E., of the Discovery shaft on said lode, and 655 feet being N. 88° W. of said shaft. Said lode being situated in Independent mining district. The location and bounds of said claim marked
290 and described more particularly as follows, to wit:

Beginning at corner No. 1, a well-marked post, same as N. W. cor. No. 4, of Lulu May lode, whence bears a spruce pine 8 in. diameter, S. 18° E. 5 ft. Thence on south side line, S. 88° E., 750 ft. to centre post in stones 1,500 ft. to S. E. cor. No. 2, marked A. J. L. No. 2, whence bears a spruce pine 18 in. in diameter, S. 68° 35′ E. 9 ft. Corner No. 2 is same as cor. No. 3 of Lulu May lode claim. Thence on east end line, N. 2° E. 300 ft. to N. E. corner No. 3, marked A. J. L. No. 3, whence bears a spruce pine 12 in. diameter, N. 48° E. 19 ft. Thence on north side line N. 88° W. 750 ft. to centre post in stones & 1,500 ft. to N. W. corner No. 4, marked A. J. L. No. 4, whence bears

spruce pine 14 in. diameter, N. 45° W. 19 ft. Thence on west end line, S. 2° W. 300 ft. to corner No. 1, the place of beginning. Discovery is a shaft 10½ ft. deep, in which mineral in place was discovered June 18th, 1879, at a depth of 9 feet, in the county of Lake and State of Colorado.

JAMES A. SAWYER,

Attest:

J. L. MCMANNS, JR.,
Surveyor.

Recorded July 10th, at 3 p. m., 1879.

JAS. H. WELLS,
Recorder.
E. T. WOLVERTON,
Deputy.

STATE OF COLORADO,
County of Lake, ss:

291 I, F. M. Reardon, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of location certificate No. 5523, as appears of record in my office, in book O, page 72.

Witness my hand and official seal this 14th day of Feb'y A. D. 1884.

[SEAL.] F. M. REARDON,
Clerk and Recorder.

(Endorsed:) Copy location of Andrew Jackson lode.

EXHIBIT I.—*R. H. B., Examiner.*

No. 5526.
Book O.
Page 78.

STATE OF COLORADO,
Lake County, ss:

Know all men by these presents that we, the undersigned, have this 28th day of June, 1879, claimed by right of location fifteen hundred feet linear and horizontal measurement in length and 300 feet in width on the Bonanza Queen lode, along the vein thereof, with all its spurs, dips, variations and angles, together with the amount of surface necessary for working the same and allowed by law, 30 feet of said so located lying and being N. 50° E. of the Discovery shaft on said lode, and 1,470 feet being
292 S. 50° W. of said shaft, said lode being situated in Independence mining district, the location and bounds of said claim being marked and described more particularly as follows, to wit:

Beginning at corner No. 1, a well-marked post at N. W. corner of claim, whence bear Discovery shaft S. 66° 15′ E. 137 ft., spruce pine 12 in. diam'ter S. 11° 30′ E. 6 ft.; thence on west side line S. 50° W. 750 ft. to center post in stones & 1500 ft. to S. W. cor. No. 2, marked S. W. cor. B. Q. L. No. 2, whence bears spruce pine 20 in. diameter N. 37° 16′ E. 29; thence on south end line S. 76° 30′ E. 325 ft. to S. E. corner No. 3, marked B. Q. L. No. 3, whence bears spruce pine 18 in. diameter N. 22° 15′ W. 22 ft. & Mt. Sheridan S. 72° 15′ E.; thence on east side line N. 50° E. 750 ft. to center post & 1,500 ft. to N. E. corner No. 4, marked B. Q. L. No. 4, whence bears a spruce pine 10 in. diameter S. 80° W. 16

ft.; thence on north end line N. 76° 30′ W. 325 ft. to N. W. cor. No. 1, the place of beginning.

Discovery is a shaft 12 ft. deep, in which mineral in place was discovered June 18th, 1879, at a depth of 9 ft.

James A. Sawyer owns one-half (½) in the Bonanza Queen lode claim, and Henry Kaufman & A. Raymond own each one-fourth (¼) interest.

In the county of Lake and State of Colorado.

JAMES A. SAWYER (½).
HENRY KAUFMAN (¼).
A. RAYMOND (¼).

Attest: J. L. MCMANNS, Jr., *Surveyor.*

Recorded July 10, at 3 p. m., 1879.

293 JOS. H. WELLS, *Recorder.*
E. T. WOLVERTON, *Deputy.*

STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of location certificate No. 5526, as appears of record in my office, in book O, page 78. Witness my hand and official seal this 14th day of Feb'y, A. D. 1884.

(S'g'd)
[SEAL.] F. M. REARDON,
Clerk and Recorder.

(Endorsed:) Copy of location of Bonanza Queen lode.

EXHIBIT K.—*R. H. B., Examiner.*

No. 5527.
Book O.
Page 79.

STATE OF COLORADO,
Lake County, ss:

Know all men by these presents that we, the undersigned, have
294 this 28th day of June, 1879, claimed by right of location fifteen-hundred feet linear and horizontal measurement in length, and 300 feet in width, on the Lizzie Bell lode, along the vein thereof, with all its spurs, dips, variations, and angles, together with the amount of surface necessary for working the same and allowed by law, 660 feet of said lode so located lying and being N. 52° E. of the Discovery shaft on said lode, and 840 feet being S. 52° W. of said shaft; said lode being situate in Independent mining district. The location and bounds of said claim being marked and described more particularly as follows, to wit:

Beginning at corner No. 1, a well-marked post being the NW. corner of claim, whence bears a spruce pine 10 in. diameter S. 69° E. 1½ ft.; thence on west side line S. 52° W. 750 to center post in stones & 1,500 ft. to S. W. corner No. 2, marked L. B. No. 2, whence bears Discovery shaft of Bonanza Queen lode S. 66° 15′ E. 137 feet, a spruce pine 12 in.

diameter S. 11° 30′ E. 6 ft.; thence on south end line S. 76° 30′ E. 325 ft. to S. E. cor. No. 3, same as cor. No. 4, Bonanza Queen lode claim, marked L. B. No. 3, whence bears spruce pine 10 in. diameter S. 80° W. 16 ft.; thence on east side line N. 52° E. 750 feet to center post in stones & 1,500 ft. to N. E. corner No. 4, marked L. B. No. 4, whence bears spruce pine 10 in. diameter N. 87° 15′ W. 5 ft.; thence on north end line N. 76° 30′ W. 325 ft. to corner No. 1, the place of beginning.

Discovery is a shaft 11½ ft. deep, in which mineral in place was discovered June 13th, 1879, at a depth of 8 feet.

James A. Sawyer owns one-half (½) interest in Lizzie Bell lode claim & Henry Kaufman & A. Raymond own each one-fourth (¼) interest. In the county of Lake and State of Colorado.

JAMES A. SAWYER (½).
295 HENRY KAUFMAN (¼).
A. RAYMOND (¼).

Attest:

J. L. MCMANNS, Jr.,
Surveyor.

Recorded July 10, at 3 p. m., 1879.

JOS. H. WELLS, *Recorder.*
E. T. WOLVERTON, *Deputy.*

STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of location certificate No. 5527, as appears of record in my office, in book O, page 79.

Witness my hand and official seal this 14th day of Feb'y, A. D. 1884.

[SEAL.] (S'g'd) F. M. REARDON,
Clerk and Recorder.

(Endorsed:) Copy of location of Lizzie Bell lode.

Exhibit L.—R. H. B., Examiner.

27482.
Book X.
Page 78.

OFFICE OF THE IRON SILVER MINING COMPANY,
115 *Broadway, New York.*

This is to certify that Waldemar Arens, esq., residing at the city of Leadville, in the county of Lake and State of Colorado, the prin-
296 cipal place of business of the said corporation, is hereby duly appointed agent for the said corporation in place of W. S. Keyes, resigned, upon whom all process may be served in said State.

Witness the seal of the said corporation and the signature of the president and secretary thereof this 5th day of October, A. D. 1880.

[IRON SILVER MINING CO.] G. D. ROBERTS, *President.*
and G. F. VERDENAL, *Sec.*

Signed, sealed, and delivered in presence of
WILLIAM H. CLARKSON.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 5th day of October, A. D. 1880, before me, William H. Clarkson, a commissioner of deeds of the State of Colorado in and for the State of New York, residing in said city of New York, personally appeared G. D. Roberts, president of the said Iron Silver Mining Company, and D. F. Verdmal, secretary of the same company, to me personally known to be the same persons whose names are subscribed to the foregoing instrument, and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned, and as the free and voluntary act and deed of said company; and the said G. D. Roberts and D. F. Verdenal being by me first duly sworn, they did depose and say that he, the said G. D. Roberts, was the president of the said Iron Silver Mining Company; that he, the said D. F. Verdenal, was the secretary of
297 the same company; that the seal affixed to the foregoing instrument was the corporate seal of said company; that it was affixed thereto by order of the board of trustees—said company, and that they signed their names thereto by the like order as president and secretary of said company respectively.

In witness whereof I have hereunto set my hand and affixed my official seal this 5th day of October, A. D. 1880.

[Commr's seal]. WILLIAM H. CLARKSON,
Commissioner for Colorado in New York
(117 *Broadway, N. Y. City*).

Recorded Oct. 14th, 1880, at 2 p. m.

JOS. H. WELLS,
Recorder.
———— ————,
Deputy.

STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of app'm't of agent No. 27482, as appears of record in my office, in book X, page 78.

Witness my hand and official seal this 14th day of Feb'y, A. D. 1884.

[SEAL.] F. M. REARDON,
Clerk and Recorder.

(Endorsed:) Copy of appointment of agent Iron Silver Mining Co.

298 EXHIBIT M.—*R. H. B., Examiner.*

STATE OF COLORADO,
County of ———— *ss:*

Know all men by these presents that S. J. Dyer, Wm. Kissel, O. H. Shepard, and C. A. Davies, the undersigned, have, this 31st day of May, 1879, located and claimed, and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of

Congress, approved May 10, 1872, and all subsequent acts, and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the Gunnison lode, vein, ledge, or deposit, along the vein thereof, with all its dips, angles, and variations, as allowed by law, together with 150 feet on each side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges, or deposits, and surface ground, within the lines of said claim, 750 feet, running N. 8° 25′ E. from centre of Discovery shaft, and 750 feet running S. 8° 25′ W. from centre of Discovery shaft, being situate upon said lode, vein, ledge, or deposit, and within the lines of said claim, in California mining district, county of Lake and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1 (NW. cor.), a pine tree, 14″ in diameter; thence S. 81° 35′ E. 300 feet to corner No. 2, from which a pine tree 16″ in diameter bears N. 17° 15′ E. 6 feet, and a pine tree 12″ in diameter bears S. 87° E., 11½ feet, and Discovery shaft bears S. 19° 44′ W. 765.5 feet; thence S. 8° 25′ W. at 750 feet. East center side stake 1,500 feet to corner No. 3; thence N. 81° 35′ W. 300 feet to cor. No. 4;
299 thence N. 8° 25′ E. at 750 feet west center side stake 1,500 feet, to cor. No. 1, the place of beginning. Situated on south side Sugar Loaf cañon, west side Arkansas River. Variation in all courses 15° east. Discovered May 18th, 1879.

S. J. DYER (¼). [SEAL.]
WM. KISSEL (¼). [SEAL.]
O. H. SHEPARD (¼). [SEAL.]
C. A. DAVIES (¼). [SEAL.]

The said lode was located on the 31st day of May, 1879.

Attest: W. D. CHAPMAN.

Date of certificate, May 31st, A. D. 1879; located June 3rd, 1879, 2 o'clock p. m.

JOSEPH H. WELLS, *Recorder.*
E. T. WOLVERTON, *Deputy.*

STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for the said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of location of Gunnison Lode No. 3893, as appears of record in my office, in book "M," page 133.

Witness my hand and official seal this 4th day of March, 1884.

[SEAL.] F. M. REARDON, *Clerk and Recorder.*

Copy. No. 3893. Location certificate. On the Gunnison mining claim of S. J. Dyer et al. in California mining district, Lake County, State of Colorado. State of Colorado, county of Lake, ss. I hereby certify that this location certificate was filed for record in my office at 2 o'clock p. m., June 3rd, A. D. 1879, and duly recorded in book "M," page 133. Jos. H. Wells, recorder. E. T. Wolverton, deputy.

300 EXHIBIT N.—*R. H. B., Examiner.*

This deed, made this thirty-first day of March, in the year of our Lord one thousand eight hundred and eighty, between Louis Rucker, of Detroit, of the county of Wayne and State of Michigan, of the first part, and J. A. Sawyer, of the county of Lake and State of Colorado, of the second part:

Witnesseth, That the said party of the first part, for and in consideration of the sum of ten dollars to the said party of the first part, in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the party of the first part has in and to the following described placer claim situate, lying,
301 and being in the county of Lake and State of Colorado, to wit:

The Fanchon placer claim, being U. S. survey No. 660, and the Stinson placer claim, U. S. survey No. 661, all in California mining district.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said party of the first part, either in law or in equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

[SEAL.] LOUIS RUCKER.

Signed, sealed, and delivered in presence of Wm. H. Fox, Wm. J. Watennan.

(Endorsed:) Copy. No. 20179. Quit-claim deed. Louis Rucker to J. A. Sawyer. State of Colorado, Lake County, ss. I hereby certify that this instrument was filed for record in my office, at 10 o'clock, a. m., Apr. 17, 1880, and is duly recorded in book 38, page No. 391. Jos. H. Wells, recorder. C. W. Ingram, deputy.

302 STATE OF MICHIGAN,
County of Wayne, ss:

I, on this 1st day April, 1880, personally appeared before me the within named Louis Rucker, known to me to be the person who executed the foregoing instrument & acknowledged the same to be his free act and deed, and I further certify that said Rucker has no wife.

[NOTARIAL SEAL.] WM. J. WATENAN,
Notary Public, Wayne Co., Mich.

EXHIBIT N.—*R. H. B., Examiner.*

STATE OF MICHIGAN,
County of Wayne, ss:

I, Robert A. Lizzett, clerk of said county and clerk of the circuit court for the county of Wayne, which is a court of record having a seal, do

hereby certify that Wm. J. Watenann, whose name is subscribed to the certificate of proof of acknowledgement of the annexed instrument and therein written, was at the time of taking such proof or acknowledgment a notary public in and for said county, duly commissioned and qualified and duly authorized to take the same; and further, that I am well acquainted with the handwriting of such notary public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of this State. In testimony whereof I have hereunto set my hand and affixed the seal of said court and county, at Detroit, this first day of April, A. D. 1880.

[WAYNE CO. SEAL.] ROBT. A. LIZZETT, *Clerk.*

This deed, made this thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty, between Mark J. David,
303 of the county of Lake and State of Colorado, of the first part, and J. A. Sawyer, of the county of Lake and State of Colorado, of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of ten dollars to the said party of the first part, in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed, and quitclaimed, and by these presents does demise, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns, forever, all the right title, interest, claim and demand which the said party of the first part has in and to the following-described placer claim, situate, lying, and being in the county of Lake and State of Colorado, to wit: All of my right to the Fanchon placer claim, being U. S. survey No. 660, and the Stinson placer claim, being U. S. survey No. 661, all in California mining district.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said party of the first part, either in law or in equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

MARK J. DAVID. [SEAL.]

Signed, sealed, and delivered in presence of William P. Wood.

EXHIBIT O.—*R. H. B., Examiner.*

STATE OF COLORADO,
304 *Lake County, ss:*

I, A. S. Weston, in and for said county, in the State aforesaid, do hereby certify that Mark J. David, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day, in person, and acknowledged that he signed, sealed, and deliv-

ered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this thirteenth day of April, A. D. 1880.

[NOTARIAL SEAL.] A. S. WESTON,
Notary Public.

STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of quitclaim deed No. 20064, as appears of record in my office, in book 38, page 358.

Witness my hand and official seal this 14th day of Feb., A. D. 1884.

[SEAL.] F. M. REARDON,
Clerk and Recorder.

(Endorsed:) Copy. No. 20064. Quitclaim deed, Mark J. David to J. A. Sawyer. State of Colorado, Lake County, ss. I hereby
305 certify that this instrument was filed for record in my office at 9.30 o'clock a. m., Apr. 15, 1880, and is duly recorded in book 38, page No. 358. Jos. H. Wells, recorder. C. W. Ingram, deputy.

EXHIBIT P.—*R. H. B., Examiner.*

This deed, made this 2nd day of Feb'y, in the year of our Lord one thousand eight hundred and eighty, between W. Arens, T. H. Reamas, P. Henderson, A. M. Rucker, M. J. David, O. T. Crauthers, L. Rucker, of the county of Lake and State of Colorado, of the first part, and J. A. Sawyer, of the county of Lake and State of Colorado, of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of five hundred dollars to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said parties of the first part have in and to the following-described placer claim, situate, lying, and being in the county of Lake and State of Colorado, to wit, the "Fanchon" Placer claim, being U. S. survey No. 660, and the Stinson Placer claim, being U. S. survey No. 661, all in California mining district, in said county and State.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining; and all the estate, right, title, interest, and claim
306 whatsoever of the said party of the first part, either in law or in equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

W. ARENS. [SEAL.]
T. H. RAINDS. [SEAL.]
PERCIVAL HENDERSON. [SEAL.]
A. M. RUCKER. [SEAL.]
O. S. CROWTHER. [SEAL.]

STATE OF COLORADO,
Lake County, ss:

I, A. S. Weston, a notary public in and for said county, in the State aforesaid, do hereby certify that W. Arens, T. H. Raines, Percival Henderson, A. M. Rucker, & O. S. Crowther, personally known to me as the person whose names are subscribed to the annexed deed, appeared before me this day, in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 2nd day of Feb'y, A. D. 1880.

[NOTARIAL SEAL.] A. S. WESTON,
Notary Public.

307 STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of quitclaim deed No. 18793, as appears of record in my office in book 38, page 231.

Witness my hand and official seal this 14th day of Feb'y, A. D. 1884.

[SEAL.] F. M. REARDON,
Clerk and Recorder.

(Endorsed:) Copy. No. 18793. Quitclaim deed. A. M. Rucker et al. to J. A. Sawyer. State of Colorado, Lake County, ss. I hereby certify that this instrument was filed for record in my office, at 9.30 o'clock a. m. M'ch 22, 1880, and is duly recorded in book 38, page No. 231. Jos. H. Wells, recorder; C. W. Ingram, deputy.

EXHIBIT Q.—*R. H. B., Examiner.*

This deed, made this 7th day of February, in the year of our Lord one thousand eight hundred and eighty-two, between James A. Sawyer, of the county of Lake and State of Colorado, of the first part, and the Iron Silver Mining Company, a corporation existing under the laws of the State of New York and authorized to purchase & hold real estate in the county of Lake and State of Colorado, of the second part, witnesseth, that said party of the first part, for and in consideration of the sum of two
308 thousand dollars, to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowleged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part, its heirs and assigns forever, all the following described lot or parcel of land, situate, lying, and being in the county of Lake and State of Colorado, to wit:

The Fanchon, Placer claim, U. S. survey number (660) six hundred and sixty, and the Stinson Placer claim, U. S. survey number (661) six hundred and sixty-one, all situated at the head of Buffalo Gulch, in California mining District, county of Lake, and State of Colorado, excepting nevertheless those portions of the following mining claims which are in conflict with the said Fanchon and the said Stinson Placer claims, to wit: 1st. The Bo-

nanza Queen, recorded and described in the records of the county of Lake and State of Colorado, in book O, on page 78. 2nd. The Lizzie Bell, recorded and described in the same records, in book O, on page 79. 3rd. The Ferguson, recorded and described in the same record, in book O, on page 175. 4th. The Andrew Jackson, recorded and described in the same records, in book O, on page 72. 5th. The Southern, (750) seven hundred and fifty feet of the Paxton, recorded and described in the same records, in book O, on page 176.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above-bar-
309 gained premises, with the hereditaments and appurtenances: To have and to hold the said premises above bargained and described with the appurtenances, unto the said party of the second part, its heirs and assigns forever. And the said James A. Sawyer, party of the first part, for himself & his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, its heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed, as of good, sure, perfect, absolute, and indefeasible estate of inheritance, in law, in fee-simple, and has good right, full power, and authority to grant, bargain, sell, and convey the same, in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of whatsoever kind or nature soever; and the above-bargained premises, in the quiet and peaceable possession of said party of the second part, its heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year above written.

JAMES A. SAWYERS. [SEAL.]

STATE OF COLORADO,
Lake County, ss:

310 I, C. J. Rowell, a notary public in and for the said county, in the State aforesaid, do hereby certify that James A. Sawyer, personally known to me to be the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 7th day of February, A. D. 1882.

[NOTARIAL SEAL.] C. J. ROWELL,
Notary Public.

STATE OF COLORADO,
County of Lake, ss:

I, J. W. Jacque, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and cor-

rect copy of warranty deed No. 39956, as appears of record in my office, in book 52, page 211.

Witness my hand and official seal this 14th day of Feb'y, A. D. 1884.

[SEAL.] F. M. REARDON,
Clerk and Recorder.

(Endorsed:) 39956. Warranty deed. James A. Sawyer to The Iron Silver Mining Company. State of Colorado, Lake County, ss: This deed was filed for record at 9 o'clock a. m. Feb. 8, 1882, and duly recorded in book 52, page 211. J. W. Jacque, recorder.

(Here follows diagram marked p. 310.)

311 EXHIBIT R.—*R. H. Buck, Examiner.*

This deed, made this 6th day of August, in the year of our Lord one thousand eight hundred and eighty-one, between James A. Sawyer, of the county of Lake, and State of Colorado, of the first part, and H. Hail, E. Hoelke, H. E. Hoelke, J. L. Huse, W. J. Fretsch, H. Elder, Kabe Leavick, J. H. Heron, A. W. Eyer, E. B. Knight, F. F. D'Avignon, & A. B. Hereford, and State of Colorado, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar & other valuable considerations to the said party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, release, sell, convey, and quitclaim, unto the said parties of the second part, their heirs and assigns, forever, all the right, title, interest, claim, and demand which the said party of the first part has in and to the following-described mining claim, situate, lying, and being in the county of Lake, and State of Colorado, to wit: All of that part or parcel of the Fanchon placer claim, U. S. survey No. 660, described as follows, to wit: Beginning at corner No. 3 of U. S. survey No. 1483; thence N. 65° W. 300 feet; thence N. 25° E. 826.5 feet; thence S. 71° E. 301.7 feet; thence S. 25° W. 858 feet, to the place of beginning, containing 5.81 acres; reserving, however, from this conveyance all of the timber now on said premises described, and the right at any time to enter upon the same for the purpose of removing said timber:

To have and to hold the same, together with all and singular
314 the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining; and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said parties of the second part, their heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

[SEAL.] JAMES A. SAWYER.

STATE OF COLORADO,
Lake County, ss:

I, A. S. Weston, a notary public in and for said county, in the State aforesaid, do hereby certify that James A. Sawyer, personally known to

me as the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of August, A. D. 1881.

[NOTARIAL SEAL.]

A. S. WESTON,
Notary Public.

STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for said county, in
315 the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of quitclaim deed No. 35320, as appears of record in my office, in book 54, page 211.

Witness my hand and official seal this 11th day of March, A. D. 1884.

[SEAL.] F. M. REARDON,
Clerk and Recorder.

(Endorsed:) Copy. Exhibit R. R. H. Buck, examiner. No. 35320. Quitclaim deed. James A. Sawyer et al. to E. Hoelke et al. State of Colorado, Lake County, ss: I hereby certify that this instrument was filed for record in my office at 11 o'clock a. m. Aug. 6, 1881, and is duly recorded in book 54, page No. 211. Jos. H. Wells, recorder.

EXHIBIT S.—*R. H. Buck, Examiner.*

STATE OF COLORADO,
County of Lake, ss:

Know all men by these presents that F. L. Molin, W. Brockman, John H. Heron, Aaron W. Eyer, Elmer B. Knight, David H. Reichley, the undersigned, have, this 19th day of September, 1879, located and claimed, and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of Congress approved May 10, 1872, and all subsequent acts, and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the Juniatta lode, vein, ledge, or deposit, along the vein thereof, with all its dips, angles, and variations, as allowed by law, together with 150 feet
316 running N. 65° W., and 150 feet running S. 65° E. from the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges, or deposits, and surface ground within the lines of said claim, 1,450 feet running S. 25° W. from centre of discovery shaft, and 50 feet running N. 25° E. from center of discovery shaft, said discovery shaft being situate upon said lode, vein, ledge, or deposit, and within the lines of said claim, in Independence mining district, county of Lake, and State of Colorado, described by metes and bounds, as follows, to wit:

Beginning at corner No. 1 a well-marked post set in stone at N. W. corner of claim marked No. 1, whence bears a spruce pine 12″ dia. S. 4° 15′ W. 12 ft. Thence on west side line S. 25° W. 750 feet to center post, and 1,500 feet to a well-marked post at S. W. corner No. 2. Thence on south

end line south 65° E. 300 feet to a well-marked post in stones, at the S. E. corner No. 3. Thence on east side line N. 25° E. 750 feet to center post, and 1,500 feet to a well-marked post set in stones, at N. W. corner. Thence on north end line N. 65° W. 300 feet to corner No. 1, the place of beginning. Discovery shaft is 15 feet deep and well timbered.

The said lode claim is situate about 2 miles N. W. of Soda Spring on Frying Pan Hill.

Said lode was located on the 19th day of September, A. D. 1879. Attest: J. L. McManns, jr., surveyor.

Date of certificate, Sept. 19th, A. D. 1879.

F. L. MOLIN, (1–10) [SEAL.]
W. BROCKMAN, (1–10) [SEAL.]
J. H. HERON, No. 2, (1–5) [SEAL.]
ARON W. EYER, (1–5) [SEAL.]
317 ELMER B. KNIGHT, (1–5) [SEAL.]
DAVID H. RECHLEY, (1–5) [SEAL.]

Recorded Sept. 27th, 1879, at 3 o'clock p. m.

JOS. H. WELLS, *Recorder.*
By J. M. WILLIAMS, *Deputy.*

STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of location certificate of "Juniatta" lode No. 9531, as appears of record in my office, in Book P, page 64.

Witness my hand and official seal this 13th day of March, A. D. 1884.

[SEAL.] F. M. REARDON,
Clerk and Recorder.

(Endorsed:) Copy. No. 9531. Location certificate. On the Juniatta lode mining claim of F. L. Molin et al., Independence mining district, Lake County, State of Colorado. Exhibit S. R. H. Buck, examiner. State of Colorado, County of Lake, ss: I hereby certify that this location certificate was filed for record in my office at 3 o'clock p. m., Sept. 27th, 1879, and duly recorded in Book P, page 64. Jos. H. Wells, recorder, by J. M. Williams, deputy.

318 EXHIBIT T.—*R. H. B., Examiner.*

STATE OF COLORADO,
County of Lake, ss:

Know all men by these presents, that we, Clare T. Barr and Chas. E. Emery, the undersigned, have this fifth day of Sept., 1879, located and claimed, and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of Congress, approved May 10*m*, 1872, and all subsequent acts, and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the Tidal Wave lode, vein, ledge, or deposit, along the vein thereof, with all its dips, angles, and variations, as allowed by law, together with one hundred fifty feet on each side of the middle of said vein at the surface, so far as can be deter-

mined from present developments; and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim, 700 feet running N. 35° E. from center of discovery shaft, and 800 feet running S. 35° W., W. 35° N. from center of discovery shaft; said discovery shaft being situate upon said lode, vein, ledge, or deposit, and within the lines of said claim, in mining district county of Lake and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1, base of mountain, marked by pine post, upon which is inscribed corner No. 1 and N. E. corner Tidal Wave lode; also tree blazed and marked N. E. corner T. W. L., east side line running thence S. 35° W. thirteen hundred feet to corner No. 2, which is marked by pine post, and corner No. 2 S. E., T. W. L., line running thence five hundred feet; west 35° north to corner No. 3, marked by pine stake, also
319 by two blazed dead pine trees; E. five feet, and southeast six feet from corner marked S. W. corner T. W. L.; west end line runs from corner No. 3 three hundred feet north 35° east to corner No. 4, marked by pine stake and one dead pine tree blazed and marked corner No. 4 and N. W. corner T. W. L.; line runs thence two hundred ft. east 35° S., thence west 35°, east one thousand feet to corner No. 5, marked by pine stake and two blazed pine trees N. E. and S. W. from corner north end line, thence three hundred feet east 35° south to corner No. 1, or point of beginning. Said lode is in Sec. 18, T. P. 9 S., R. 80° W. Discovery shaft seven hundred feet from north end line and one hundred and fifty feet from side line.

Said lode was located on the first day of September, A. D. 1879.

Attest: Clare T. Barr, Charles E. Emery. Date of certificate, A. D. 18 .

Recorder Nov. 29th, '79, at 3 p. m.

JOS. H. WELLS, *Recorder.*
E. T. WOLVERTON, *Deputy.*

STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of location certificate of "Tidal Wave" lode No. 12724, as appears of record in my office in Book P, page 274.

Witness my hand and official seal this 13th day of March, A. D. 1884.

[SEAL.] F. M. REARDON,
Clerk and Recorder.

320 (Endorsed:) Copy. No. 12724. Location certificate. On the Tidal Wave mining claim of Clare S. Barr, Chas. E. Emery mining district, Lake County, State of Colorado. Exhibit T., R. H. Buck, examiner. State of Colorado, county of Lake, ss: I hereby certify that this location certificate was filed for record in my office at 3 o'clock p. m. Nov., 29th, 1879, and duly recorded in book P, page 274. Jos. H. Wells, recorder. E. T. Wolverton, deputy.

EXHIBIT U.—*R. H. B., Examiner.*

Book N.
Page 505.
No. 10466.

STATE OF COLORADO,
County of Lake, ss:

Know all men by these presents that Elliott E. Williams and Fred Kloffenstein have this 15th day of October, A. D. 1879, located and claimed by right of discovery and location, in compliance with the mining acts of Congress approved May 18, 1872, and all subsequent acts, and with local customs, laws, and regulations, 1,500 feet horizontal measurement in length and 300 feet in width on the Michigan Boy Lode, along the vein thereof, with all its dips, variations, and angles, as allowed by law, and all veins, lodes, or ledges and surface ground within the bounds of said claim, 750 feet running N. 16° 45′ E. from center of the discovery shaft on the said lode and 750 feet running S. 16° 45′ W. from said shaft, said lode be-
321 ing situated in California mining district, county and State aforesaid, and described more particulary as follows, to wit: Beginning at the S.E. cor. No. 1, a pine post, from which the discovery shaft bears N. 5° 27′ E. 764 ft.; thence from cor. No. 1 N. 73° 15′ W. 300 ft. to the S.W. cor. No. 2; thence N. 16° 45′ E. 750 ft. to center stake W. side line 1,500 ft. to the N.W. cor. No. 3, from which a blazed pine tree 12″ in dia. is 10 ft.; thence S. 73° 15′ E. 300 ft. to the N.E. cor. No. 4, from which a blazed pine tree 10″ in dia. is 7 ft.; thence S. 16° 45′ W. 750 ft. to center stake E. side line 1,500 ft. to cor. No. 1, the place of beginning. All corners are pine posts properly marked and firmly set in mounds of stones. From the discovery shaft Mt. Elbert bears S. 15° 35′ W., and the monument on Mt. Sheridan bears S. 73° 25′ E. From the center of the north end line the E. side center stake of the Bonanza Queen lode bears N. 4° W. 131 ft. Variation in all courses 15° E. The above described Michigan Boy lode is situated at the head of Frying Pan Gulch, about seven miles west of Leadville, and northerly from the Gen. Shields Lode.

——— ———. [SEAL.]
ELLIOTT E. WILLIAMS (½). [SEAL.]
FRED KLOFFENSTEINE (½). [SEAL.]

Discovered Sept. 4th, A. D. 1879.
Located Oct. 15th, A. D. 1879.
Date of certificate Oct. 16th, A. D. 1879.
Attest:

FRANK L. SIZER.

Recorded Oct. 17th, 1879, at 12.30 p. m.

JOS. H. WELLS,
Recorder.
E. T. WOLVERTON,
Deputy.

322 STATE OF COLORADO,
County of Lake, ss:

I, F. M. Reardon, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true

and correct copy of location certificate No. 10466, as appears of record in my office, in book N, page 505.

Witness my hand and official seal this 7 day of Mar., A. D. 1884.

[SEAL.] F. M. REARDON,
Clerk and Reco'der.

(Endorsed:) "Copy." No. 10466, loc. cert. Michigan Boy lode. Exhibit U., R. H. Buck, examiner.

(Endorsed:) 1150. Circuit court U. S. The United States vs. The Iron Silver Mining Co. Examiner's report of testimony taken on behalf of complainant. Opened, published, and filed Nov. 17, 1884.

(S'g'd) EDWARD F. BISHOP, *Clerk.*

323 And afterwards, and on the same day, to wit, the 17th day of November, A. D. 1884, there was opened, published, and filed in said court, and in said cause, the examiner's report of testimony taken on behalf of respondents. And the said examiner's report of testimony is in words and figures as follows, to wit:

Examiner's report of testimony taken on behalf of respondents.

In the circuit court of the United States for the district of Colorado, in the eight' circuit.

THE UNITED STATES OF AMERICA
vs.
THE IRON SILVER MINING CO. ET AL. } No. 1150, *ss.*

SIR: You will please take notice that the said defendants in the above entitled cause desire the evidence to be adduced therein to be taken orally under the 67th equity rule of the United States Supreme Court.

And you will further take notice that the said defendants will proceed to take the testimony and depositions of witnesses in their behalf in this case before R. H. Buck, one of the examiners of the said court, at his office in the city of Leadville, county of Lake, and State of Colorado, on the 8th day of February, 1884, at 10 o'clock in the forenoon, and will continue the examination of such witnesses and the taking of
324 such testimony from day to day at the same time and place until such examination is completed, and proceed as such examiner shall direct.

(S'g'd) G. G. SYMES,
Solicitor and of Counsel for Def'ts.

To the Hon. ANDREW W. BRAZEE,
United States District Attorney for the State of Colorado.

(Endorsed:) No. 1150. In the circuit court of the U. S. The United States of America vs. The Iron Silver Mining Co. Notice of taking testimony. Service of within notice this day admitted. Feb. 1, 1884. A. W. Brazee, U. S. Att'y. Filed this 8th day of February, A. D. 1884. R. H. Buck, Examiner. G. G. Symes, Denver, Colo., Att'y for Deft.

In the circuit court of the United States, eighth judicial circuit, district of Colorado, *ss:*

THE UNITED STATES OF AMERICA
v.
THE IRON SILVER MINING COMPANY and James A. Sawyer. } Equity.

The depositions of Francis C. Fay, Thomas McGowan, James S. Mitchell, Peter Coopy, Harry S. Dean, James A. Sawyers, Henry D. Bates, and Charles L. McCracken, all witnesses of lawful age produced on the part of the respondents in said cause and duly cautioned, sworn, and examined on the 8th day of February, and the 22d and 23d days
325 of April, A. D. 1884, by, and before me, Robert H. Buck, an examiner in chancery of said court, at my office in the city of Leadville, in the county of Lake, and State of Colorado, pursuant to the notice hereunto attached and the stipulations herein contained.

On this eighth day of February, A. D. 1884, at ten o'clock in the forenoon, at my office in the city of Leadville, in the county of Lake, and State of Colorado, I was attended by J. F. Frueaff, of counsel and solicitor for said respondents, and by A. W. Brazee, esq., solicitor and of counsel for said complainant, and thereupon:

FRANCIS C. FAY, a witness of lawful age, being first duly cautioned and sworn, testified as follows in answer to interrogatories to him propounded by J. F. Frueaff, esq., attorney for said defendants:

Int. 1. What is your name, age, residence, and occupation?

Ans. Age, 39 years; my name is Francis C. Fay; residence, Sugar Loaf, Lake County; occupation, miner.

2. Are you acquainted with the ground embraced in the so-called Stinson & Fanchon placers in Independence mining district, Lake County, Colorado?

Ans. Yes; not all the stakes and corners. I know the whole of Sugar Loaf Hill, and Buffalo Gulch, which runs through these placers, and have known them since 1876.

3. What was your first acquaintance with them in 1876?

Ans. I came there to prospect for placer gold.

4. What prospecting did you do upon them there?

(Objected to as immaterial, irrelevant, and incompetent.)

326 Ans. I sank holes and ran cuts to see whether there was gold or not. I found gold in all holes & cuts from the foot of the gulch to the head.

(Plaintiff objects to all after the words "I found" as irresponsive.)

5. How long did you work there during 1876?

Ans. I was there from about June 10th till the last of September. I was not working all the time. I built my cabins after the water played out.

6. When did you next know those premises?

Ans. In 1877. I was there the whole summer from the first of May to October.

7. What work, if any, did you do on these premises during the time you have mentioned in 1877?

(Objected to as irrelevant, immaterial, incompetent, & improper.)

Ans. I ran two cuts & sank several holes & got nice coarse gold. Below Sawyer's cabin, on the Fanchon placer, there was coarse gold, and lower down in Buffalo gulch it was shot gold, finer; same as Cherry Creek gold.

(Plaintiff objects to so much of the question as relates to what the witness got as irresponsive.)

8. During these years, 1876 and 1877, did you see other persons placer mining or washing for gold on the Stinson & Fanchon placers?

Ans. No, sir; there was nobody there but myself and my men.

9. When after 1877 did you next see the premises?

327 Ans. In 1877.

10. Did you work there then?

Ans. No.

11. How long were you there in 1878?

Ans. I was not there much in 1878; just drove over there, & that's all.

12. Were you there in 1879?

Ans. The same as in 1878.

13. Were you there in 1880?

Ans. Not in Buffalo Gulch to do any work.

14. Do you know of other persons besides yourself placer mining at any time since 1876 in Buffalo Gulch on the premises now embraced on the Stinson and Fanchon placers; and, if so, who and when?

Ans. Mr. Sawyer and Thomas M. Gowan were the only ones that I know of. They worked there last year, 1883.

15. From 1878 until last year were you frequently or not on these premises?

Ans. I was not.

16. Have you been on these premises during 1883?

Ans. I have.

17. Are you acquainted with the workings by Mr. Sawyer on the Fanchon placer in Buffalo Gulch below Mr. Sawyer's cabin?

Ans. I know there is such a tunnel there, but have never been into it.

18. During the summers of 1876 and 1877 that you testify having worked them yourself, had you other men working with you?

(Objected to as irrelevant, immaterial, and improper and incompetent.)

Ans, Yes, sir.

328 19. How many, who were they, and where are they now?

(Objected to as last above).

Ans. There was three, Charles Clark, of Denver, now in Boulder or Sunshine, and one Stanley, now in Ohio somewhere, I think, and Capt. Griffith who is since dead.

20. How far up Buffalo Gulch towards the top of the mountain did you placer mine or prospect for placer workings?

(Objected to as last above).

Ans. I sank holes to the top till I was satisfied that there was gold clear to the top. I found gold in every hole.

21. These workings and prospectings of which you have spoken made by you in 1876 and 1877 were, as I understand it, in the Fanchon placer?

Ans. They were in part.

22. Where were the other holes and workings?

Ans. They were in the side hill of Buffalo Gulch, on both sides down

to the bottom of Buffalo Gulch or the timber. It was all timber there except just where the stream ran.

23. Had you before 1879 heard of any lodes known or discovered in Buffalo Gulch on either the Stinson or Fanchon placer?

(Objected to as irrelevant, immaterial, improper, and irrelevant).

Ans. No, sir.

2. And thereupon, on cross-examination, said witness FAY further testified as follows in response to cross-interrogatories to him propounded
329 by A. W. BRAZEE, Esq., solicitor for said complainant.

X 1. Was your work mentioned by you in 1876 and 1877 prospecting for placer gold?

Ans. Yes, sir.

X 2. Was Charles Clark with you in both of those years on such work, and if not, on which?

Ans. In 1876 only.

X 3. Was he with you all the time during such work in that year in Buffalo Gulch, and if not, how much of the time?

Ans. About two months.

X 4. What was the value of all the work you did in Buffalo Gulch in those years in placer prospecting?

Ans. About $500 worth.

X 5. What was the total value of the gold taken out by you in prospecting in Buffalo Gulch and on the mountain sides bordering the same in 1876 and 1877?

Ans. I couldn't tell you. I sent some to Denver, sold some to Tabor, probably in Buffalo Gulch not more than $400.

X 6. Did you prospect that gulch and the hillsides draining into it with a view to the location of that ground or any part of it as a placer mining claim?

Ans. Yes, sir.

X 7. Did you locate any placer mining claim on any of the ground so prospected by you in that gulch or the hillsides draining into the same, on the now so-called Fanchon & Stinson placers, as you understand their location, before the location of said placers?

Ans. Yes, sir.

X 8. What was the name of the placer located by you on what
330 is now called the Stinson and Fanchon, or either of them?

Ans. I just called it Buffalo Gulch, twenty acres, staked it out. Four of us staked 20 acres each.

X 9. When?

Ans. In 1876.

X 10. Were location certificates filed by you and your associates on said placer claims of 20 acres each staked by you and them; and, if so, when, and by what names?

Ans. I think Wilson G. H. Clark, Charles Clark's brother, had them recorded. I don't know where, but they would have to be in Granite at that date. Don't know by what names. I have forgot all about that.

X 11. Do you know of your personal knowledge that any such location certificates were filed by Clark?

Ans. I do not.

X 12. When did you do the last work on the placer that you staked out in Buffalo Gulch?

Ans. In 1877.

X 13. Have you any lode claim staked and recorded on the ground of the Stinson and Fanchon placers, as you understand their location; and, if so, give the names of all such lode claims?

(Objected to except the time be specified in the question.)

Ans. I have not.

X 14. At what time, or about what time, did the water give out in Buffalo Gulch in 1876 and 1877, respectively.

Ans. In 1876 the last of June, and the same in 1877.

X 15. What was the source of supply of water in Buffalo Gulch
331 in those years.

Ans. From the snow and springs. That's all. Snow mainly.

(S'g'd) FRANCIS C. FAY.

Subscribed and sworn to this 8th day of February, A. D. 1884. Before me.

(S'g'd) ROBERT H. BUCK, *Examiner*.

And thereupon, THOMAS MCGOWAN, a witness of lawful age, being first by me duly sworn on oath, testified as follows in response to interrogatories to him propounded by J. F. FRUEAFF, Esq., solicitor for respondents:

Int. 1. What is your name, age, residence, and occupation?

Ans. Name, Thomas McGowan; age, 51 years; residence, Sugar Loaf Mountain, Lake County, Colorado; occupation, prospector.

2. Do you know the ground of the Stinson and Fanchon placers in Buffalo Gulch and on Sugar Loaf Mountain in Lake County, Colorado, in Independence mining district?

Ans. I couldn't tell exactly round the whole lines. I partly know both placers.

3. How long have you known them?

Ans. In 1878 I crossed them looking for placer mines.

4. What indications, if any, did you then find of previous placer mining upon them?

(Objected to as irrelevant, incompetent, and immaterial.)

Ans. I found some old workings, boxes, and riffles there.

332 5. What prospecting, if any, did you in 1878 do upon these premises yourself?

Ans. I prospected the banks of the old workings and found gold, I thought, in paying quantities.

6. When did you next work upon them?

Ans. I never worked on them any more. I thought somebody had a claim on them.

7. Did you see any indications of or workings upon lode claims within those placer premises in 1878; if so, what were they?

(Objected to as irrelevant, immaterial, and improper.)

Ans. No; I did not.

8. Did you go to work upon these premises in the summer of 1883; and, if so, when?

Ans. I did. I couldn't tell the date exactly. It was in May.

9. What work have you been doing there since?

Ans. Placer mining.

10. What did you find while placer mining?

Ans. I found coarse gold on the Fanchon, I think, principally.

11. Have you been in certain holes on the Stinson and Fanchon placers called the Andrew Jackson, the Ferguson, the Bonanza, the Lizzie Bell, and any other so-called lode claim discovery shaft, or in the General Marion, Norwood Paxton, or Lulu May?

(Objected to as irrelevant, immaterial, and improper. The defendants are estopped from proof concerning the first four named, tending to
333 show that there is no mineral in them.)

Ans. Yes, sir; I was in all of them.

12. How careful an examination did you make of each of them and of the ground through which they passed and in which they stopped?

(Objected to as last above.)

Ans. I went down in each hole and worked with a pick and shovel. Those that were not deep enough I shoveled out the dirt to the depth of ten feet, to ascertain whether there was mineral or not or any trace of a lode. Some of them had caved.

13. What was the greatest depth of any of them and the least depth of any?

(Objected to as last aforesaid.)

Ans. The Lizzie Bell was the deepest, and was about fourteen feet deep. The shallowest was caved, and might have been deeper than it appeared to me. It appeared to me about six or eight feet deep.

14. Did you do any work on the shallow one to get to the bottom of the caving?

Ans. I did not.

15. What did you do in it?

Ans. I threw out the loose dirt that had caved in.

16. Through what material had these before-named holes been sunk?

Ans. I considered them all wash.

17. Did you see in any of them, either down their sides or in the bottom, rock in place of any kind?

(Objection to as leading, immaterial, irrelevant, and improper.)
334 Ans. Excepting one, a very shallow one. In that I found granite in place. In all the others I found only wash.

18. Did you or not find in any of the before-mentioned holes any lode, ledge, or deposit of mineral in rock in place bearing silver, gold, lead, or other precious minerals?

(Objected to as irrelevant, immaterial, and improper. Defendants are estopped so far as lode claims which they or either of them had located on this ground from disputing their validity.)

Ans. I did not.

19. How long since you commenced work there, in 1883, have you been on these placer premises?

Ans. I worked from some time in May till the latter part of June, when the water gave out.

20. How long have you been mining?

Ans. About 24 years.

21. Are you familiar with lodes when you see them, and with placer gold, and placer mining?

Ans. Yes, sir; I am familiar with them ever since I came to Colorado, about 24 years ago.

22. Did you make such an examination of the before-named holes as would have shown to you any lode or vein of mineral if contained therein?

(Objected to as leading and improper.)

Ans. I did.

And thereupon, on cross-examination, said witness, THOMAS MCGOWAN, further testified as follows in response to cross-interrogatories to him propounded by A. W. BRAZEE, Esq., solicitor for said complainant:

335 X 1. Where did you find the boxes and riffles in 1878?

Ans. In Buffalo Gulch.

X 2. Do you know of any gulch in that vicinity called the Frying Pan or Little Frying Pan?

Ans. I do.

X 3. How far is it across the Divide, between Frying Pan and Buffalo Gulch, in a straight line?

(Objected to as not cross-examination of anything brought out, and immaterial.)

Ans. I couldn't tell exactly. Perhaps about 1,500 feet from the head of Buffalo Gulch to the head of Frying Pan. Hardly that.

X 4. As you go down these gulches from the head, does the distance between them increase or diminish?

Ans. It increases.

X 5. How long were the boxes which you found there in 1878?

Ans. I can't tell. They were partly covered by the banks caving in, and partly exposed to the naked eye. They are generally made 12 feet long.

X 6. How many boxes did you see?

Ans. I saw part of three, anyhow, exposed, and three riffles.

X 7. Were the riffles in the boxes?

Ans. No; they were thrown up on the bank.

X 8. How much work did you do, and in what gulch did you do it, that you have referred to in 1878?

Ans. I only prospected the banks. It was in Buffalo Gulch.

X. 9. Do you know the new cabin where Sawyer lived last summer?

Ans. I do.

336 X 10. At the head of what gulch is that, if any?

Ans. Near the head of Buffalo Gulch.

X 11. How far below that cabin or the place where that cabin stands, did you see the boxes and riffles in 1878?

Ans. I couldn't tell exactly.

X 12. About how far?

Ans. Can't possibly say how many feet it was.

X 13. How far should you judge the distance to be?

Ans. About 1,000 feet, or in that neighborhood. Maybe not so much.

X 14. Did you see a spring at or near where these boxes were?

Ans. Yes, sir; there was a spring above them, and another one above

Sawyer's cabin. The first-named was, the nearest part of it, about 500 or 600 feet from the boxes.

X 15. How near these old boxes did you prospect in 1878?

Ans. Right at their face. They were laying down, partly covered.

X 16. How long did you work there prospecting?

Ans. About an hour or so.

X 17. What did you do?

Ans. Just picked on the face of the bank and got some of the gravel and washed it.

X 18. What did you wash it in?

Ans. Rinsed it out on a shovel.

X 19. How many shovelsfull did you wash on that occasion.

337 Ans. About three shovelsfull.

X 20. How much gold did you get?

Ans. It run about 8, 10, or 12 colors on each shovel.

X 21. Was that all the prospecting you did in that gulch in 1878.

Ans. That's all.

X 22. Where, with reference to those old boxes that you saw in 1878, did you work in 1883?

Ans. Above and below them.

X 23. About how far above and about how far below?

Ans. I commenced about 20 feet above and worked about 600 feet below the old workings.

X 24. Who worked with you there in 1883, if anybody?

Ans. Mr. Mitchell helped me put in a dam, and another man whose name I forget helped me work the ground.

X 25. How long were you and the other men working the ground in 1883?

Ans. We worked two weeks below and seven or eight days above the old workings.

X 26. What did you have to work with, that is, to separate the gold from the dirt?

Ans. We had boxes and riffles, and used quicksilver.

X 27. How much was you labor worth per day in 1883?

(Objected to as not cross-examination of anything brought out and immaterial.)

Ans. I was getting $3 per day & boarding myself. The other man got the same, I suppose.

338 X 28. What was the reasonable value of your boxes and dam?

Ans. We had six boxes with riffles, about eight pounds of quicksilver—we did not use it all—and the dam. These were worth about fifty dollars, anyhow—maybe more.

X 29. How much gold did you and the other man take out there in 1883, if you know?

Ans. I couldn't tell you; we had no scales.

X 30. What did you do with it?

Ans. I handed it over to Mr. Sawyer.

X 31. Who employed you and the other man to work there and furnished the boxes and material?

Ans. Mr. Carlin; Tom Carlin employed us and furnished boxes and materials.

X 32. If Tom Carlin employed you why did you give the gold to Mr. Sawyer?

Ans. Because he had occasion to come to town, and Mr. Carlin lived in town. I gave it to him to give to Carlin.

X 33. Who employed you to examine the lode holes or shafts mentioned by you?

Ans. Mr. Sawyer.

X 34. When, as near as you can state?

Ans. About the latter part of July, 1883.

X 35. When did you make the examination?

Ans. In July.

X 36. How long were you engaged in examining the eight lode holes or shafts mentioned by you?

Ans. I disremember; it took me nearly a whole week.

339 X 37. How do you know that you examined the shaft of the Andrew Jackson?

Ans. I saw the Discovery stake close to the prospect hole.

X 38. How did you identify the Ferguson?

Ans. By looking at the stakes.

X 39. How did you identify the Bonanza, and the lodes mentioned by you?

Ans. By the stakes and formation around.

X 40. State whether there were a good many other holes that you didn't examine in the Stinson and Fanchon ground.

Ans. Yes.

X 41. Who paid you for making this examination?

Ans. Mr. Sawyer.

X 42. What was the source of supply of water last year when you worked there?

Ans. Snow and springs.

X 43. Which supplied the greatest amount of water, the snow or the springs?

Ans. The springs.

X 44. Did you have any but spring water, that is, water that flowed out of the springs?

Ans. Yes; spring and snow water.

And thereupon, on redirect examination, said witness, THOMAS MCGOWAN, further testified as follows in response to interrogatories to him propounded by J. F. F. RUEAFF, Esq., solicitor for said respondents:

340 Redirect 1. What was the kind of holes which you testified that you did not examine in the Stinson and Fanchon ground when making the examination by request of Mr. Sawyer?

Ans. It looked to me that they were done by prospectors; whether they were looking for placers or not I can't tell.

Redirect 2. Were there posts at them?

Ans. Some of them there was. But they were old, little holes.

Red. 3. How many of them were about that you saw but did not examine?

Ans. I know of four of them anyhow. May be a few more.

Red. 4. How deep were they?
Ans. They were caved so that you couldn't tell. Old workings.
(S'g'd) THOMAS MCGOWAN.

Subscribed and sworn to this 8th day of February, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
United States Commissioner.

Adjourned to 1.30 p. m.

Resumed at 1.30 p. m.

And thereupon JAMES S. MITCHELL, a witness, of lawful age, being first by me duly cautioned and sworn, testified as follows in response to interrogatories to him propounded by J. F. FREUAFF, Esq., counsel for said defendants:

Int. 1. State your name, age, residence, and occupation.
Ans. Name, James S. Mitchell; age, 23; residence, Sugar Loaf; occupation, miner.
Int. 2. How long have you been a miner?
Ans. About ten years.
3. How long have you lived in Colorado?
341 Ans. About 3 years.
4. Are you acquainted with the ground embraced within what is known as the Stinson and Fanchon placers in Buffalo Gulch and on Sugar Loaf Mountain, Independence mining district, Lake County, Colorado?
Ans. I am.
5. How long have you been acquainted with it?
Ans. Since the summer of 1881.
6. What have been your means of becoming acquainted with it?
Ans. I went over to Sugar Loaf to look at some interests I had a notion of purchasing, in the summer of 1881. I met Mr. Sawyer there, and he took me round and showed me the ground, and then I went on to the claims I was going to. He took me round to the holes that were on the placer and showed me where his lines were, but didn't take me to all the holes.
7. From that time to this have you at any other times, and if so, when, been upon and over the premises of the Stinson and Fanchon placers?
Ans. I was there in the summer of 1882, and in the summer of 1883.
8. Have you worked upon the premises; and if so, when?
Ans. In the summer of 1883 I worked for Mr. McGowan, putting up the dam. In the same summer I worked in the Norwood, General Marion, Andrew Jackson, Lulu May, Paxton, Bonanza Queen, Ferguson, Lizzie Bell. That's all.
9. What did you do in these holes, and what did you find there
342 as to the character of the material through and in which these holes were sunk, and also whether or not you saw in any of them rock in place or lodes, veins, or ledges bearing mineral of any kind.
(Objected to as incompetent to contradict facts stated in location certificates made by the defendants or either of them. They are estopped by their certificates from contradicting such facts.)
Ans. I worked in those placers after Mr. McGowan had cleaned them

out. I looked for mineral, but didn't find any. I found in the Lulu May and Lizzie Bell bed rock, solid formation, but no mineral. The bed rock was granite. The others were all in wash.

10. Did you or not see in any of them mineral matter, or indications of mineral of any kind?

(Objected to as last above.)

Ans. I did not.

11. Have you seen upon these premises placer working for gold; and, if so, when and where?

Ans. In the summer of 1881 I saw two old boxes where some person had been working in the gulch. But not knowing anything about placer mining I didn't pay any attention to them. In 1883 I saw where some parties had been working, and saw Mr. McGowan pan out some gold.

12. Did you examine other holes on the Stinson and Fanchon placer besides those you have named?

Ans. There was one other hole there that I went to, but it was in wash, not timbered, and there was no stake there to show that it had been taken up by any person.

13. Are there on these placer claims other location holes and
343 discovery holes besides those named and examined by you?

Ans. The Fanchon placer is all over discovery holes taken up by those jumpers. There is the Iron Duke, Richmond, and Horseshoe. Also the Amazon, Advance, and the names of the others I don't remember. I have been in all these named.

14. Did you in any of these last mentioned find any mineral in rock in place?

Ans. I couldn't say whether it was mineral or not. I saw no mineral. Parties claimed it was mineral who had located them.

15. Were these five last-named claims located after you first went on the premises in 1881, or had they been located before that?

(Objected to as immaterial, irrelevant.)

Ans. The Horseshoe, Richmond, and Amazon were located since that. I don't know about the others. The Iron Duke was located since I went there.

And thereupon, on cross-examination, said witness, JAMES S. MITCHELL, further testified as follows, in response to cross-interrogatories to him propounded by A. W. BRAZEE, Esq., solicitor for said complainant:

X 1. When you examined the Horseshoe, Richmond, Amazon, Iron, Duke, and Advance, and others the names of which you do not remember, were parties working on them, or either of them?

Ans. There were parties working on the Advance and Amazon in the winter of 1882 & 3. Nobody was working on the other at that time.

X 2. When did you make your examination?

344 Ans. Sometime after New Year's in 1883, in the winter-time.

X 3. Do you know whether McGowan had made any examination before that, on those claims?

Ans. I don't know as he ever saw them.

X 4. When was it that you examined the Jackson, Bonanza Queen, Lulu May, Lizzie Bell, and four others?

Ans. I examined the Norwood, General Marion, Paxton, Ferguson,

Andrew Jackson, Lizzie Bell, Bonanza Queen, in the summer of 1883. I don't remember exactly the month.

X 5. At whose request did you make that examination of those claims?

Ans. Mr. Sawyer's—James A. Sawyer—one of the defendants.

X 6. State for what purpose, if you know, he had you make such examination?

Ans. I was prospecting for him, and he told me to go and look at those holes and see if I couldn't find some mineral.

X 7. How did this stuff look that you have mentioned, which parties claimed was mineral?

Ans. It was a white rock resembling quartz or hard porphyry.

(S'g'd) JAMES S. MITCHELL.

Subscribed and sworn to this 8th day of February, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

And thereupon PETER COOPY, a witness of lawful age, being by me first duly cautioned and sworn, testified as follows in response to interrogatories to him propounded by J. F. FRUEAFF, Esq., attorney for said defendants:

345 Int. 1. State your name, age, residence, and occupation.

Ans. Name, Peter Coopy; age, $40; residence, Sugar Loaf; occupation, miner.

2. How long have you been a miner, and where?

Ans. About 4 years; in Colorado.

3. Are you acquainted with the ground embraced in what is known as the Stinson and Fanchon placer claims in Buffalo Creek and on Sugar Loaf Mountain, in Independence mining district, Lake County, Colorado?

Ans. I am acquainted with part, but not all, of the ground.

4. Have you been in the shafts in said premises marked as the Bonanza Queen, Lizzie Bell, Ferguson and Paxton lodes?

Ans. I have.

5. How careful was the examination made by you as to whether or not the same contained any mineral in place, or whether they were run through and into said formation of rock?

Ans. I examined the works as close as I knew how, from top to bottom.

6. What did you find in the same?

(Objected to on the ground that the defendants are estopped from impeaching locations made by them, or either of them, on which they have filed certificates of location.)

Ans. Wash, I call it.

346 And thereupon, on cross-examination, the said witness, PETER COOPY, further testified as follows in response to cross-interrogatories to him propounded by A. W. BRAZEE, Esq., solicitor for said complainants.

X 1. At whose request did you make such examination?

Ans. Mr. Sawyer's, James A. Sawyer, one of the defendants.

X 2. For what purpose?

Ans. I was working for him and he told me to go down there and examine carefully and see whether I could find a lode or mineral.

X 3. When did you make such examination?

Ans. Some time in this month.

X 4. What did you do in making such examination?

Ans. Went down with pick and shovel and worked in the holes.

X 5. Was there any water or ice in these holes or any of them at the time of such examination?

Ans. No water or ice. There was a little snow.

X 6. Was the ground frozen in the bottom of the shafts?

Ans. It was frosted a little, but nothing but what you could pick it and see what was there.

X 7. How deep did you dig in the Bonanza Queen, Lizzie Bell, Ferguson, and Paxton? State, in respect to each, the depth you dug.

Ans. I didn't dig in the bottom of any of them. I picked around to see what was there.

X 8. Were these shafts timbered or either of them?

Ans. No; they were not timbered to the bottom. There were
347 two sets of timbers in three of them, from the top.

X 9. Was there any appearance of the wash having caved in in any or all, and if any, on which of these shafts?

Ans. I should say they had caved in a little.

And thereupon, on redirect examination, said witness COOPY further testified as follows:

Redirect 1. Had or not the caving in so filled up any of the holes that you could not make an examination of the whole of them from top to bottom and along the sides?

Ans. No; I don't think it had. It might bother a little at the bottom, but at the sides as deep down as ten or eleven feet you could examine thoroughly.

(S'g'd) PETER COOPY.

Subscribed and sworn to this 8th day of February, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK.
Examiner.

And thereupon HARRY S. DEAN, a witness of lawful age, being by me first duly cautioned and sworn on oath, testified as follows in response to interrogatories to him propounded by J. F. FRUEAFF, Esq., solicitor for said respondents.

Int. 1. State your name, age, residence, and occupation.

Ans. Name, Harry S. Dean; age, 24; residence, Sugar Loaf; occupation, miner.

2. Are you acquainted with the ground embraced in the Stinson
348 and Fanchon placers on Buffalo Gulch and on Sugar Loaf Mountain, in Independence mining district, Lake County, Colorado?

Ans. I am acquainted with part of it.

3. Have you been in the discovery shafts of the claims called the Bonanza Queen, the Lizzie Bell, the Ferguson, and the Paxton, located within the Fanchon placer?

Ans. I have.

4. What examination did you make of them, and for what purpose?

Ans. I made as good examination as I could, for the purpose of seeing whether there was any mineral or lode in those holes. I had a pick and shovel with me.

5. What did you find in them, or either of them?

(Objected to as incompetent, immaterial. Defendants are estopped from impeaching locations made by them, or either of them, contradicting their certificates of location.)

Ans. What I should call wash.

6. Any mineral or any rock in place, solid formation?

Ans. Could not say that I saw any.

7. How long have you been mining?

Ans. About 20 months, in this camp.

And thereupon, on cross-examination, the said witness, HARRY S. DEAN, further testified as follows in response to cross-interrogatories to him propounded by A. W. BRAZEE, Esq., solicitor for said complainant:

349 X 1. When did you make such examination?

Ans. In this month.

X 2. Was there any ice in the bottom of these shafts, or either of them, at the time of such examination?

Ans. No, sir.

X 3. Was the ground frozen in the shafts at the time of such examination?

Ans. It was frosted some—not frozen—you could pick it.

X 4. How deep did you dig in the bottom of these shafts and each of them?

Ans. I dug a little bit in the bottom. Didn't sink it any. Didn't throw out any dirt. I drove the pick in the bottom perhaps half way up to the eye, say, one, two, or three inches.

X 5. At whose request did you make the examination?

Ans. Mr. James A. Sawyers.

6. Where are these shafts, on what mountain?

Ans. They are at the right of Buffalo Gulch, and some close to the gulch, and one about 100 feet off.

(S'g'd) HARRY S. DEAN.

Subscribed and sworn to this eighth day of February, A. D. 1884, before me.

(S'g'd) ROBERT H. BUCK,
Examiner.

Adjourned by consent, subject to stipulation hereafter to be filed.

APRIL 22D, A. D. 1884—2 o'clock p. m.

350 The testimony in chief on the part of complainant having been closed, the testimony on the part of the respondents was resumed pursuant to the stipulation dated April 9, A. D. 1884, heretofore herein filed.

And thereupon James A. Sawyer, a witness of lawful age, produced on the part of the respondents, being by me first duly cautioned and sworn

on oath, testified as follows in response to interrogatories to him propounded by G. G. SYMES, Esq., solicitor for and on behalf of said respondents:

Int. 1. State your name, residence, and occupation.

Ans. My name is James A. Sawyer; residence, Soda Springs, Colorado; occupation, wagon maker. I am and have for several years been engaged in mining.

2. Do you know the Fanchon and Stinson placer claims; and, if so, how long have you known them?

Ans. I do, and have known them by those names since the winter of 1879 and 1880.

3. How long have you known the ground included within those patented placer claims?

Ans. Since the early part of June, 1879.

4. State how you came to know the ground in June, 1879; that is, if you went upon the ground and prospected and did any work, state what you did.

Ans. I was told by Henry Kaufman that if I would come out and dig he would show me where. I went out there about 9th or 10th of June,
1879, and dug two holes, when they showed me in the wash and
351 got a surveyor to survey and located two claims, the Bonanza
Queen and Lizzie Bell. Then I laid out four others and dug the holes and got them recorded for myself, the Paxton, Ferguson, Lulu May, Andrew Jackson, and General Marion. I dug ten foot holes on all these claims and afterwards went to cross-cutting and digging to try to find lodes, as I was told there was plenty of them there. These cross-cuts were mostly open cuts, mostly in wash, but sometimes in the bottom we would come to rocks after going six or eight feet, but I did ny have to shoot any except in one hole. I had three or four men from that time on till the 10th or 11th of October succeeding.

5. What other work did you do on these placer claims or on the ground included in these placer claims during the summer or fall or winter of 1879?

Ans. First I built a cabin for summer use, and as winter approached I built two good cabins. One is in the head of Buffalo Gulch, in the Fanchon placer, the other is little lower down, on the Stinson.

6. State whether or not you did any prospecting on those placer claims during the summer or fall of 1879 in the way of panning out dirt in gravel, and, if so, what you found.

Ans. One of my men was an old Black Hills miner, and he suggested we try for gold, and I borrowed a pan and he found gold, but he hadn't the water to wash it much; there was a little water in the bottom of the ravine. He decided that if we had water he could make it pay. He
had to dig down to get water.
352 (Complainant objects to so much of the answer as states what
the miner decided, as mere hearsay.)

7. State what next you did with reference to locating this ground as placer claims and proceeding to make application and obtain placer patents for it.

Ans. By October I was considerably in debt for grub and owed these men. I went over to see Mr. Stevens to sell him an interest I owned in the Kayservin claim, alongside of his iron claim on Iron Hill. Then I

met Mr. Leiter, and being acquainted with him for over twenty years, he inquired kindly about my affairs, and I told him what I was doing and hoped to do, and about my interest in the Kayservin, and why I had come there. He says, "Perhaps we will go in with you and help you." We set a day to go and look at the claims I have mentioned in Buffalo Gulch that I had located. Three days later Mr. Stevens went with me, and we walked up and down over the claims. He seemed to me to examine pretty closely, the trees and everything, and made the remark that the timber was not so valuable for saw timber or mining timber as to keep on hand and let it grow. We then examined the holes. He said it was a waste of money to dig in that ground for lode claims, as the formation was not such as they usually found lodes in; that the rock was not granite but gneiss. He then suggested that we take it up as a placer, provided we could trace out any ground that we could bring water over from Lake Creek. We then started down northeast to see if we could do such a thing, I
353 leading his horse and he examining. We came on round down the hill to the creek, and then round a point and back to Buffalo Gulch, lower down than where we had been. He then said we would go back to the iron mine and take it up with Mr. Leiter.

8. Did you and Mr. Stevens or not at this time find or discover that it was practicable to bring water from Lake Creek across and upon the said Stinson and Fanchon placer ground into Buffalo Gulch by a ditch, to carry on placer mining?

(Objected to as leading and as calling for an opinion on a question in engineering, on which witness is not shown to be experts.)

Ans. Mr. Stevens decided it could be done. He desired to cut off the coal burners, who were cutting the timber.

(Complainant objects to what Stevens decided as hearsay.)

9. State anything else that you and Mr. Stevens did or said or decided at this time, with particular reference to whether the ground was valuable for lode mining purposes, or only valuable or more valuable for placer mining purposes.

(Objected to as hearsay.)

Ans. I recollect one word he used particularly, that he wouldn't give a pinch of snuff for the ground for lode claims or the prospect of finding lodes. Then he went on to say that he could serve two purposes, that is, save the ground from loss by these timber thieves and make some
354 money by working the placer. That if Leiter agreed to it, he would talk up the placer business that night. We did not get in in time to make any bargain that night.

10. State what next took place between you and Mr. Stevens or Leiter with reference to any agreement for them to put up money and grub-stake and you to furnish the work and labor to locate this ground for placer claims and mines and apply for and obtain patents for the same.

Ans. The next morning, after much talk, they agreed to put up the money and give me a grub-stake—I doing the work and entering as placer the land of the Fanchon and Stinson placers, I being allowed, after the patents were issued, to select forty-odd acres of land and deed them the balance.

11. Now state what you and Stevens and Leiter did in pursuance of that agreement with reference to locating these placer claims and doing work upon them and applying for the patents.

Ans. He sent Henry D. Bates, the surveyor, and two men with me, and we went out and made a preliminary survey of these two claims—the Stinson and Fanchon. We came back. Mr. Stevens gave me a letter down to Judge Weston, and he and I talked it over, and Weston and Bates' partner made out the location papers and I signed them, together with Mr. Arens, Lou Rucker, Mr. Henderson, Mr. Crowthers, and Mark David, and a young man, Reims, since deceased, and A. M. Rucker. Then I left the matter with Judge Weston and went back to work.

355 12. State what next you did with reference to doing any further work upon these placer claims, having any surveys made, and making application for patents.

Ans. I fixed up my cabins for winter and worked on the placers and dug some more holes, to make the full amount of work. Bates came out with three men early in December to make the final survey. By the 24th December he finished it, and I came in with him to Leadville on the evening of the 24th December and stayed here till they got through with me in making the application for patent. Bates' partners and Judge Weston got up the papers for said patents.

13. Why were the names of Arens, Henderson, Reims, A. M. and L. Rucker, David, and Crowther joined with you in the location certificates of said Stinson and Fanchon claims?

Ans. Mr. Stevens said we must have 8 names because we couldn't take but 20 acres apiece. After the location they deeded their interests to me, and I applied for the patents in my name.

14. Did these men authorize the use of their names in the location certificates?

Ans. They did. Four of them were out with me, and all these four, except Mr. Henderson, assisted me.

15. State the value of the work and labor done and performed by you and the men that you employed and paid on the Fanchon placer claim before you made the application for patent for the same.

Ans. At a fair valuation, what I paid them would amount to between $500 and $600 on the Fanchon.

356 16. What was the value of the work and labor actually done and performed by you and men employed and paid by you, on the said Stinson placer claim before you made the application for patent on the same?

Ans. A little over $700 on the Stinson.

17. State the character of this work and labor; that is, whether it consisted mostly of prospecting, by sinking shafts or pit-holes through the wash and down to the rock in place and mining open cuts and building cabins to live in on said claims.

Ans. It was open cuts and sinking on these placers except what I did on the cabins and summer shanties. I had a fourth cabin covered with a large wagon sheet.

18. Did you abandon the lode claims that you have mentioned that you located upon said placer ground in June or July, 1879, before you located the ground or placer claims?

(Objected to as calling for the opinion of the witness on abandonment, a mixed question of law and fact.)

Ans. I did. I went and asked Judge Weston if I was allowed to

abandon it; if it was right to do so and take up the land as placer ground. He said it was, unless there were veins discovered. I told him there was not. He said, then, it was perfectly legitimate and right if I wished to.

(Complainant objects to so much of the answer as follow the first "did," on the ground that it is not responsive, and is mere hearsay. Defendants are estopped by their location certificates from contradicting them.)

357 19. State why you abandoned these lode claims and proceeded to locate and appropriate the ground as placer claims; that is, with reference to whether it was because you did not find or discover in your holes or shafts in said lode claims any veins, lodes, or ledges of quartz or other rock in place carrying silver, gold, or other valuable deposits.

(Objected to on the ground that the last part of the question or explanation thereof suggests the answer desired.)

Ans. I had worked there for months with all the men I could hire on tick and other ways, got in debt, and couldn't find anything to pay, nothing like pay, and with the hope of washing out gold by using it as placer ground, and trying to make something out of it and get my money back, I took it up as placer. With the assistance of Stevens and Leiter I could do so.

20. State what you did after you obtained the said placer patents, with reference to deeding portions of the ground to W. Stevens and Leiter for the consideration of their having furnished you money and provisions to do a large portion of the work and obtain the patents.

Ans. I stayed out there till the patents came. Then Mr. Weston drew up a deed for all except forty-odd acres, and I signed it. The deed covered all the balance of the placers. I then came to the Iron mine, worked as a carpenter until the Dinero was discovered. Then I went back out there, and have stopped there ever since, and am living there now.

358 21. Were there any known lodes or veins in valuable mineral deposits of any kind of rock in place discovered or known to exist or claimed to exist within the boundaries of said placer claims at or before the date or time of the application for said placer patents?

(Objected to on the ground that plaintiffs are estopped from showing matter called for by this question, by their location certificates of location of lodes by Sawyer and others and subsequent reservation of such lodes eo nomine in the deed to defendant company.)

Ans. None. You may be sure I would never have entered it as placer if there had been.

22. State what you know about there having been placer mining carried on in Buffalo Gulch on these placer claims under leases, and if placer gold has been washed out of that ground within the last few years.

Ans. The Iron Mine Company made a lease last year to one McCracken. I think Clay was interested. They worked there as long as the water lasted. They stayed there anyhow. I don't know how much they took out, but I saw very nice dust and nuggets. Before that lease was taken I worked two men there awhile. The ground was frozen so hard I didn't make much headway, but we took out some dust, nuggets, and pieces of gold like wire, an eighth of an inch long or longer. That's all I know positively

of being done: I saw old workings and riffles and boxes laying round from the time I went there. I guess that's all I know about it.

359 23. Were there any lode claims on the discovery shafts of any known lode claims upon the ground included within the said placer claims at the time of the application for said placer patents, except the ones you have named that you located and abandoned?

Ans. None.

And thereupon on cross-examination the said witness SAWYERS further testified as follows in response to cross-interrogatories to him propounded by A. W. BRAZEE, Esq., solicitor for said complainant:

Cross 1. Had you or men in your employ, or in the employ of Stevens and Leiter, washed for gold on the Stinson and Fanchon before December 5th, 1879; and if so, for what length of time, and with what result?

Ans. Very little. Only as I told you about the pan we borrowed, and we prospected with the pan. We got a very fair showing for the water we had.

X 2. How long was the Black Hill miner engaged in prospecting with that pan?

Ans. On Saturday afternoon.

X 3. How many colors did he get, as near as you can now recollect?

Ans. I saw one shovelfull with 32 little, very small, specks of gold. The rest were not so good.

X 4. Were those all the colors that you saw?

Ans. About all.

X 5. Was all the work that was done by you before October 6, 1879, on the ground of the Stinson and Fanchon done in prospecting for lodes or leads?

Ans. Yes; all that I did hunting for lodes and leads was done before that time.

X 6. Please answer the last question.

Ans. No, sir; not all.

360 X 7. What other work was done before that time by you on the ground included in those claims?

Ans. We dug some cross-cuts right in the bottom of the ravine, so as to let the ends run each way into the hills.

X 8. When was that done, and for what purpose?

Ans. In 1879; to see what we could find.

X 9. Was the work done last year under leases the same mentioned by Clary and Kavanagh, who have been examined in the matter as witnesses in your hearing?

Ans. It was.

X 10. Have you or the men in your employ, or in the employ of Stevens & Leiter, or in the employ of the Iron Silver Mining Company, done any placer mining work on the ground of the Stinson and Fanchon, or either of said claims, since December 5, 1879, other than the work referred to done last year under lease?

Ans. Nothing worth naming.

X 11. Have you, or men in your employ, or in the employ of Stevens and Leiter, or said company, been engaged in lode mining on said ground included in said claims since December 5, 1879; and if so, to what extent?

Ans. Never struck a pick till November, 1882, after the discovery of the Dinero. Since that time they have had under my supervision from six to ten men most of the time hunting for those lode claims that are supposed to cross the placer.

X 12. What was the grub-stake that Stevens and Leiter agreed to pay or furnish you in your arrangement with them mentioned by you in your direct examination?

361 Ans. Three dollars a day.

X 13. What, by said arrangement, were you to do in consideration of receiving $3 a day from them?

Ans. They didn't state everything I was to do. I was to stay there and look after their interests in every way, I reckon, and help make roads and help load wagons.

X 14. State what you were to make roads for, and what to help load wagons with.

Answer. So the teams would go along with loads of mining timbers. They were hauling mining timbers. I was to help load mining timbers on the wagons. The bargain was that I should do all the work necessary to the entry.

X 15. Was it a part of the said arrangement or bargain that you were to watch the ground and keep outsiders from cutting timber from the ground in question?

Ans. That was not talked of.

X 16. Were the mining timbers which you cut roads to get at and helped to load cut on the ground in question chiefly?

Ans. Yes, sir; most of them; not all.

X 17. Where, if you know, were those mining timbers hauled to?

Ans. Didn't see them go to the Iron Mine, but I have no doubt they did.

X 18. Who paid for the cutting and hauling of said timbers?

Ans. I don't know.

X 19. In whose employ were the men and teams employed in cutting and hauling said timbers?

362 Ans. I don't know; only they were called Iron Mine teams; they came from there.

X 20. Who were you to work for when cutting said roads and loading said timbers?

Ans. The Iron mine paid me. They never told me to work, but I did.

X 21. When you say, "the Iron mine paid me," do you mean the Iron Silver Mining Company?

Ans. At first it was Stevens and Leiter, and now it is the Iron Silver Mining Company.

X 22. Did Stevens and Leiter, or either of them, and if so, which of them, at any time direct you, among your other services for them or said company, or request you, to look after the timber on the land in controversy to prevent others from cutting and carrying it away, and if so, when?

Ans. Neither of them ever told me any duties after it was entered at all; they just left me alone.

X 23. Is that your signature?

(Here witness is shown a paper purporting to be signed by him.)

Ans. Yes, sir.

(Here the paper is offered in evidence as part of the cross-examination of this witness, and is hereto attached, marked Exhibit V.)

(The paper is objected to because it does not tend to contradict anything the witness has said and because it is improper for that purpose.)

The witness here adds to his last answer as follows: Mr. Berry
363 came to my house late one evening and wanted me to go to Leadville. I objected, as I was very busy with the men, and he said he would write off a little statement, and if I would sign it it would save me going. I objected to signing anything under the circumstances. He said he feared the Iron Mine Company would get me out of the way before he could get my testimony, and he only wanted this statement to use in case I was run off. He read it over and I objected to some things in it which were hardly true. He made some erasures and said it would never be brought in unless I was absent, and I signed it with that promise, and that is the last I knew of it from that day to this.

And thereupon, on redirect examination, the said witness SAWYERS further testified as follows:

Redirect 1. The timber that has been cut and hauled by the Iron Mining Company from these placer claims was all used for mining purposes at the Iron mine, and was not cut or sold for any speculative purpose?

Ans. I didn't follow those logs and see them get there, but I have no doubt they did.

(S'g'd)

JAMES A. SAWYERS.

Subscribed and sworn to this 22 day of April, A. D. 1884, before me.

(S'g'd)

ROBERT H. BUCK,
Examiner.

Adjourned to April 23, 1884, at 10 a. m.

EXHIBIT V.—*R. H. Buck, Examiner.*

On or about the 6th of October, 1879, I went to see Wm. H
364 Stevens and Levi Z. Leiter to sell them and interest in the Kezervin to enable me to pay me men. *me.* I had been prospecting on what is now the Fanchon & Stinson placers, and had become embarrassed, and in my conversation with them told them what I had located, and if I could not find any mineral I could get my money back out of the timber, at which they at once and took some interest in conversation, afterwards consenting and agreeing that Mr. Stevens should accompany me to see the land. On the 9th Oct., '79, we did visit the land, and after looking it over, Mr. Stevens suggested that I should abandon the claims I had located, locate the land as placers, and they would furnish the money and I should have my ——, and they would have the balance, and they would assist me in the future; afterward they employed me to look after the timber on the land to prevent others from cutting and carrying it away.

Meantime they cut and carted to the Iron mine a good portion largest sized timber. They paid me what he, Stevens, called a grub stake of three dollars a day for my services. There is no water ditch on the land,

and no effort to build one for placer mining. They have failed to perform what they promised. The amount of the placer mining ever done on the land was very limited and not enough to make it pay. There is still a large amount of fine timber on the land.

(S'g'd)

JAMES A. SAYWERS.

(Endorsed:) U. S. vs. Iron Silver Mining Company, Exhibit V. R. H. Buck, examiner.

365 APRIL 23, A. D. 1884—10 a. m.

Resumed.

And thereupon HENRY D. BATES, a witness of lawful age produced on the part of said respondents, being by me first duly cautioned and sworn, on oath testified as follows, in response to interrogatories to him propounded by G. G. SYMES, Esq., solicitor for and on behalf of said respondents.

Int. 1. State your name, residence, and occupation?

Ans. My name is Henry D. Bates; residence, Leadville; occupation, civil mining engineer.

2. Do you know the defendants in this suit, Sawyers and the Iron Silver Mining Company?

Ans. I do.

3. Do you know the Stinson and Fanchon placer claims, and if so, how long have you known them?

Ans. I do, and have known them since early in the fall of 1879.

4. What was the occasion of your becoming acquainted with these placer claims?

Ans. I went on the ground to survey them.

5. State about the time and circumstances of your making a survey of these claims and for whom and for what purpose you made such surveys?

Ans. As near as I can recollect it was in September or October, 1879, and I was employed to make the surveys by Stevens & Leiter, for Stevens and Leiter and Sawyers.

6. Did you make more than one survey of these claims, and if so, when and for what purpose did you made the two surveys?

Ans. I made two surveys; the first to locate the claims, the second was an official survey as deputy United States surveyor, on which an ap-
366 plication for the patents was based. I am a United States deputy mineral surveyor, and made these surveys on receiving an order from the surveyor-general at Denver.

7. Did you make an examination of the ground included in these placer claims when you made the surveys of them with reference to determining the character of the ground, as to whether it was placer mining ground, whether it contained any known or discovered lodes or ledges?

Ans. Yes, sir. I made an examination for the purpose of determining whether or not any lodes, veins, or ledges of mineral in rock in place or gold-bearing rock had been discovered on the ground.

8. State how carefully you examined these claims to see if there was any known or discovered lodes or veins within them, and state particularly the result of your examination.

(Objected to on the ground that witness is not shown to be qualified to

express an opinion on the matter called for, and that defendants are estopped from contradicting the location of their lodes or what they contain, and by subsequent reservation of the same as known lodes from Sawyers, conveyance to the company.)

Ans. I examined every pit, cut, and shaft on the properties to determine whether or not any lode, vein, or ledge of mineral-bearing rock existed in these openings; I found that nothing had been discovered in the way of mineral-bearing rock in place.

9. State whether or not from your examination there was found or discovered or known to exist within the said placer claims, either at
367 the time you made the surveys for the purpose of locating said placer claims or at the time you made the official surveys for the purpose of making the application for patents, any lode, vein, ledge, or mineral deposit of rock in place bearing silver, gold, or other valuable deposits.

(Objected to as last above.)

Ans. No, sir; nothing of the kind had been discovered at the time I made either survey.

10. State what experience you have had in California mining district in the State of Colorado, as a practical mining engineer and surveyor in the examination and surveying of lode and vein and placer mining claims.

(Objected to because it does not relate to the time when these surveys were made.)

Ans. I have resided in Colorado during the last seven years. During that time I have been engaged most of that time in surveying and examining mining properties in Lake County and other counties in Colorado.

11. Are you familiar with the placer and lode and vein formations at, and in the vicinity of the location of these placer claims?

Ans. I am, and was when I made the surveys.

12. Did you make the affidavits in the proceedings to obtain the said Fanchon and Stinson placer patents, testifying that there were no known lodes or veins of rock in place bearing silver, gold, or other valuable deposits?

368 Ans. I did as required by instructions from the surveyor-general at the time I returned the field-notes to his office. I made affidavit to the fact that no discovered lodes were known to exist on the ground on which patent was applied for.

13. State what examination you made at the time you made the official survey for application for patent of the labor and work done and performed, and the improvements put on said placer claims, and each of them.

Ans. I measured all the openings upon the claim that were done by the defendants, and estimated what it was worth to do this amount of labor or improvement.

14. State the value of the work and labor that had been done and performed and the value of the improvements that you found upon said placer claims, respectively, at the time you made the said official survey.

Ans. Upon the Stinson placer I stated, in my field-notes, that the improvements were not less than $500, and that in my opinion the actual cost was not less than $600. On the Fanchon I stated that at the time I made the official survey the value of the improvements was $400. Afterwards other affidavits were made by other parties at the time the applications for patents were made to the effect that at least $500 in labor

and improvements had been done on the ground before the applications were made.

(Complainants object to so much of this answer as relates to affidavits made by other parties as improper, incompetent, and not the best evidence.)

369 15. Describe the improvements that you found and examined on these placer claims, and state what they consisted of?

Ans. On the Stinson placer claim, at the time I made the official survey, the improvements consisted of a cabin, shaft, and pits, as shown upon the plat returned to the surveyor-general. I measured the cabin, shaft, and pits, and those measurements are given in detail in the field-notes that I returned to the surveyor-general. The cabin was 14 x 20 feet in size. There was a pit 4 x 7 x 9½ feet, a shaft 76 feet deep and 3 feet by 5 in the clear and a pit 4 x 10 x 11 feet. That was all the improvements on the Stinson claim. I put the estimated cost very small, at $600, and probably it cost considerably more than that. The improvements on the Fanchon claim consisted of a pit 4 x 6 feet and 8 feet deep, an open cut 20 feet long and 2½ feet deep, another pit 3 x 8 feet in size and 9 feet deep, another pit 4 x 12 feet in size and 12 feet deep, another pit 4 x 7 feet in size and 11 feet deep, an open cut 18 feet long and 3 feet deep, and another pit 4 x 6 feet in size and 11 feet deep, another pit 4 x 8 feet in size and 10 feet deep, another pit 4 x 7 feet in size, 10½ feet deep, and another pit 4 x 6 feet in size and 11 feet deep. It was my opinion at that time that the actual cost of the above-described labor was about $400.

14. State what you saw and know about there being placer gold upon the ground or the gravel and wash formation that generally produces placer gold in that vicinity.

370 (Objected to so much of the question as calls for witnesses opinion, on the ground that he is not qualified to speak as an expert.)

Ans. I noticed upon what is called Buffalo Gulch, on the Fanchon, that some prospecting had been done for placer mines once, and that the gravel had the appearance of being auriferous.

17. State what you know about the practicability of bringing water upon said placer claims by a ditch from Lake Creek.

Ans. A ditch could be dug from the Buffalo Gulch, on the Fanchon claim, around the mountain to Lake Creek in such a manner that a large amount of water could be brought into this Buffalo Gulch, and in that way placer mining work could be carried on successfully, so far as washing the dirt is concerned.

And thereupon, on cross-examination, said witness, HENRY D. BATES, further testified as follows in response to cross-interrogatories to him propounded by A. W. BRAZEE, Esq., solicitor for said complainant:

Cross 1. Have you been over the ground which would have to be traversed by such a ditch as you have mentioned to ascertain what its grade and distance and probable cost of construction would be?

Ans. I have not been entirely over the ground. I have not traversed the ground for that purpose. I would like to explain.

(Counsel for complainant objects to any explanation, counsel for respondents insists that witness has the right to explain. Witness explains.)

371 By saying that I am familiar enough with that locality to know that the head waters of Lake Creek are much higher in elevation

than that portion of Buffalo Gulch of which I spoke in my direct examination, and that for that reason water could be easily brought into that gulch by a ditch.

X 2. Have you examined the ground the ditch would have to traverse to ascertain its length?

Ans. Not thoroughly.

X 3. Have you examined it at all to ascertain its length?

Ans. When I was upon the ground I noticed the topography of the country, and I saw that the length of such a ditch would not be very great.

X 4. Please answer my last question.

Ans. If you mean whether I have gone on there and made a survey to ascertain its length, I should say no.

X 5. What, in your opinion, would be the length of such a ditch, following the meander of its course?

Ans. Probably not more than two or three miles.

X 6. Did you ascertain by any assay made by yourself, or under your direction, of which you have personal knowledge, of the material in any of the shafts mentioned by you or the cuts or pits on the Fanchon and Stinson ground?

Ans. No, sir.

X 7. Did you go to the bottom of the 76-foot shaft mentioned by you and examine personally the material therein?

Ans. No, sir; but I examined the dump very carefully.

X 8. Did you have any assay made of any of the material found on the dump?

Ans. No, sir.

372 X 9. Was your examination to determine whether there was mineral or valuable veins or deposits in the shafts, pits, and cuts on these claims confined to the dumps?

Ans. No, sir.

X 10. Into how many pits, or shafts, or cuts, on the Fanchon have you examined at the bottom or end?

Ans. All of them.

X 11. Do you mean to say that you have examined the deep shaft at its bottom?

Ans. That shaft is in the other claim.

X 12. How long did you take to make your examination in the openings on the Fanchon?

Ans. I don't remember how long I took.

X 13. State about how long.

Ans. This work was not done all at the same time, and for that reason I cannot say.

X 14. Is this as an explicit an answer as you can give to the question asking for *that* the time that you took personally in examining the openings on the Fanchon to ascertain whether there was mineral in the same or veins or lodes therein?

Ans. I spent as much time at and in each opening as I considered necessary to do my work well. Further than that I cannot say as to time.

X 15. Then state how much time you spent in these openings on the Fanchon in making such examination.

Ans. I was a few minutes at each of them; how many I cannot state.

373 X 16. I do not ask how much time you spent at them. I ask how much time you spent in each, respectively, if any?

Ans. I was in each of them, how long I cannot say.

X 17. What did you do in making such examination in each of said openings on the Fanchon?

Ans. I examined the bottoms and sides of them.

X 18. Did you in any way examine them, or any of them, otherwise than by looking, and, if so, how otherwise?

Ans. My recollection is that we had a pick with us, and if so, I used the pick to assist me.

X 19. Can you state positively that you used a pick in any of them, and, if so, to what extent did you penetrate the walls or bottoms?

Ans. To the best of my recollection we had a pick, and, if so, I used it enough to satisfy myself as to what the openings contained by picking into the sides and bottoms.

X 20. Is that as definitely as you can answer the last question?

Ans. Yes, sir.

X 21. Did you go into the openings on the Stinson claim mentioned by you, or any of them, and examine the sides and bottom for mineral veins or lodes, and, if so, how did you examine their sides and bottom yourself personally, and what length of time, as near as you can now remember, did you spend in each?

Ans. I did go into these openings, except the 76-foot shaft, and examined the sides and bottoms for mineral veins and lodes in the same manner as I have described in reference to the Fanchon claim, and

374 spent in each about the same length of time that I did in the openings on the other claim.

X 22. Can you not answer any more specifically in regard to your examination of the openings on the Stinson than you did in respect to the openings on the Fanchon?

Ans. No, sir.

X 23. How do you know that other affidavits were made by other parties in respect to the value of improvements on the Fanchon after you made your certificate in your field-notes in respect to such value?

Ans. Because I know that such affidavit or affidavits are required by the officers of the land office before a patent can be issued.

X 24. You say in your direct examination, "I noticed upon what is called Buffalo Gulch on the Fanchon that some prospecting had been done for placer mines." State as near as you can estimate the value of such prospecting.

Ans. I cannot estimate the cost of that work, because it had then been done a long time, and it is now a long time since I have seen it.

X 25. Was that prospecting any part of the improvements included in your estimate of the value of the work done on the Fanchon and Stinson, or either of them?

Ans. No, sir; it was not.

X 26. Did you see any other evidence of placer mining on these claims, or either of them, than this old prospecting?

Ans. I do not remember that I did.

375 And thereupon on redirect examination said witness BATES further testified as follows in response to interrogatories to him pró-pounded by G. G. Symes, esq., solicitor for said complainant.

Redirect 1. Why did you not examine the shaft on the Stinson Placer claim said to be about 80 feet deep, by going down into it.

Ans. Because there was neither rope or ladder way there.

Redirect 2. How carefully did you examine the dump, and what kind of rock did you find in the dump.

Ans. I examined it very carefully and found nothing but gneiss or granite rock on the dump.

Redirect 3. To refresh your recollection, do you not remember that one Johnny Anderson carried a pick with you and others when you made the examinations to see if there were any lodes or veing in any of the workings upon those claims?

Ans. I remember that he was with us, and to the best of my recollection some one in the party carried a pick.

(S'g'd) HENRY D. BATES.

Subscribed and sworn to this 23d day of April A. D., 1884. Before me,

(S'g'd) ROBERT H. BUCK,
Examiner.

Adjourned to 2 o'clock p. m.

2 o'clock p. m. resumed.

376 And thereupon CHARLES L. MCCRACKEN, a witness of lawful age produced on the part of said respondents, being first by me duly cautioned and sworn on oath, testified as follows in response to interrogatories to him propounded by G. G. SYMES, Esq., solicitor for said respondents:

Int. 1. State your name, residence, and occupation.

Ans. My name is Charles L. McCracken; residence, Leadville, Colorado; occupation, not anything at present. I have been around mines for the last 12 or 15 years.

2. Do you know the Fanchon and Stinson Placer claims, and if so how long have you known them.

Ans. I do. I have known them since 1878, if my memory serves me right; I helped make partial surveys of those claims with M. J. David.

3. How familiar have you been with said ground since 1878?

Ans. I have been familiar with it nearly every year since. Have been all over it from one end to the other once or twice every summer.

4. State whether or not you ever had a lease on this ground for the purpose of placer mining.

Ans. Yes, sir; I had a lease on the Fanchon.

5. Did you have the privilege of working under this lease wherever you wished within the limits of said *said* placer claims?

Ans. I did.

6. State what work you did in the way of placer mining upon
377 the ground or any part of it included in said placer claims; when you did it, and all about it.

Ans. We started to work there on June 4, 1883. We put 42½ shifts in, or 42½ days. We were obliged to do a good deal of dead work and

we worked over some ground that had been worked. We reached bed rock, as near as I can remember, about June 22d, but in working over this ground, before we reached bed rock, we got gold, and a very good prospect too. About June 25th we shut down. The water played out on or about that time. From the 22d to the 25th of June we must have got about $18 or $20 worth of gold. Owing to, as I thought, the shooting in a tunnel up there, the water stopped on us. We were just depending on water from the tunnel and a spring, and as soon as they commenced mining in the tunnel the water ceased and we ceased too.

7. State your opinion of the richness of that ground for placer mining purposes; whether it would pay or not if you had water upon it; whether or not it is practicable to bring water from Lake Creek or elsewhere on to the ground.

(Objected to on the ground that witness is not shown to be competent to express the opinion called for.)

Ans. I consider the ground first-class placer ground, so much so that if I am out of work I believe I will try to get a lease on it and wash it from the snow-water, and the ground would pay very well if a ditch were run in there. I asked for a three years' lease on the ground, agreeing to put in a ditch, to cost not less than $6,000, if they would give me a
378 three years' lease. A ditch could very easily be brought on from Lake Creek, and would have to be brought, I should judge, from 2½ to 3 miles.

8. What evidence did you see of placer mining or prospecting having been done upon the ground before you mined there?

Ans. The only evidence I could see was, the day we prospected prior to taking the lease. Some pans we got 20, 30, and 50 colors in prospecting, and in one of the pans was quite a large nugget. It was nearly all coarse gold.

9. State what you know about whether there was any discovered or known lodes, veins, or ledges of quartz or other rock in place, having been discovered or known to exist within or upon the said placer claims before the applications were made for the placer patents in the month of January, 1880?

Ans. From all the holes or shafts that I looked into I didn't see any veins or discoveries of any kind.

10. How particular examination have you made from time to time since 1878 of the shafts, pit-holes, or other prospect workings in said claims?

Ans. Almost every shaft I would go past I would get into, and many times I have gone to look at shafts out of my way. I don't suppose I could make more thorough examination than to go down into the shaft and examine it thoroughly.

11. What caused you to make so thorough an examination to see whether there was any discovered veins or lodes?

379 Ans. For my own satisfaction more than anybody else. If I had found anything I should probably have located the next claim.

12. What experience have you had in prospecting for both placer deposits and lode or vein deposits?

Ans. About 13 years.

13. When?

Ans. Almost in any country from Idaho to old Mexico.

14. Are you familiar with the indications and formations which lead to the discovery and indicate the presence of lodes or veins and placer deposits in Lake County, in the Arkansas valley, and in the immediate vicinity of these placer claims?

(Objected to as leading.)

Ans. I am familiar with what is called prospectors' indications, not with experts' indications. A prospector's indications are iron, black sand and gravel, and then you have got to dig for it.

15. Did you find such indications of placer deposit upon these placer claims?

Ans. Yes, sir; the sluice boxes would be covered with black sand. You could hardly pan the amalgam.

16. Does most of the ground included in these placer claims have the general characteristics on the surface of the ground containing placer gold in California district on the upper portion of the Arkansas Valley?

(Objected to as leading and as calling for an opinion which the witness is not shown competent to give, and as not calling for any fact whatever.)

380 Ans. The ground shows for itself. There is a wall of gravel and loose sand and there is the first place you would go to look. You wouldn't go to look in grass. There is lots of grass there—a good ranch below.

And thereupon, on cross-examination, the said witness, CHARLES L. MCCRACKEN, further testified as follows, in response to cross-interrogatories to him propounded by A. W. BRAZEE, Esq., solicitor for said complainant.

Cross 1. Did you assist Henry D. Bates, United States deputy mineral surveyor, in making any survey on the Fanchon ground?

Ans. No, sir.

X 2. Where do you reside now?

Ans. In the Boston block, Leadville, and got my meals at the restaurant.

X 3. How long have you been out of employment?

Ans. I don't suppose it has been over 20 days in the last 7 or 8 years.

X 4. What has been your business at that time?

Ans. Most everything.

X 5. Please state some kinds of business which you have been engaged in in Lake County?

Ans. Prospecting, clerking, and book-keeping, days' work in the mines. I guess that will cover about all of it.

X 6. What else?

Ans. I guess that about covers the ground.

X 7. How much time of this time in the county have you been
381 in the employ of the Iron Silver Mining Company and Stevens & Leiter?

Ans. I guess about 4½ or 5 years would cover it.

X 8. Have you been a witness for them in any other case or cases; and, if so, how many?

Ans. I never was before.

X 9. Was the lease mentioned by you in your direct examination a ver-

bal or written lease; and, if written, where is it; and, if verbal, with whom did you make it?

Ans. It was a lease by telegram from Mr. Houghton.

X 10. In that transaction whom did Mr. Houghton represent?

Ans. The Iron Silver Mining Company.

X 11. Who worked with you under that lease? If any one, name each.

Ans. Charles Clary worked, and Kavanagh, and Moore, whose first names I don't know. The two last were hired. Clary was interested.

X 12. About how many days' work did each man perform there?

Ans. Mr. Clary worked 22½ days. Mr. Kavanagh worked 13½ days. Mr. Moore worked 7 days.

X 13. How much was their labor worth a day?

Ans. Mr. Clary's $3.50, and the others $2.50.

X 14. How much time did you work on this placer?

Ans. I couldn't say that. I have no record of it at all. I was out there and back and around the place. I might have been around there about ten days, but I wouldn't say how many days I put in. I
382 was partly down in the diggings, outside, and one thing and another. I worked right down in the gulch.

X 15. How much was your time worth?

Ans. About $5 a day, I considered it.

X 16. What was the value of the material, including lumber, wear of tools, quicksilver, and other material, if any, used in this enterprise?

Ans. I couldn't give those. The bills are lost or destroyed.

X 17. Who showed the men where to go to work?

Ans. I believe we found that out ourselves. I am pretty positive of that. We all three went to the ground together, Mr. Clary, Mr. Lou Rucker, and myself.

X 18. Was this work done in the bottom of the gulch?

Ans. No, sir; not in the bottom of the gulch.

X 19. Was it commenced at the lowest point in the surface between a stake on the south side and an old cabin on the north side of the gulch and on a line with and opening through the timber running north and south and crossing the gulch at the point where work was commenced? And in this connection I call your attention to Exhibit A^2, and the line between corners 2 and 3 of the Fanchon claim as the line indicated by the stake and cabin and the opening running north and south, or nearly so, through the timber, such as is usually cut in making official surveys on the ground.

Ans. We commenced right at the line in the gulch and washed
383 over old ground about 18 or 20 feet, working up the gulch west.

X 20. How wide a cut did you make there?

Ans. I don't know; we must have had 12 feet.

X 21. How long was the cut?

Ans. It must have been from where we first started to wash 20 or 30 feet.

X 22. Whose money paid for the work and material?

Ans. My own.

X 23. What claim lies next east or easterly from the point where you commenced to work?

Ans. I don't know.

X 24. Did you ever, yourself, prospect on the Fanchon or Stinson at any other place than in this cut made last year under your lease?

Ans. I did not. I got such good colors there that I didn't want to go anywhere else.

X 25. Does not the ground rise pretty steep to the north of this cut, up to the top of Sugar Loaf Mountain, or of a mountain?

Ans. No; a blind man could climb up there. It is a gradual slope, a very gradual one.

X 26. How high would you have to climb from this cut up what you call a gradual slope to get to the top on the north side?

(Objected to as entirely irrelevant, immaterial, and useless.)

Ans. I don't know anything about the top.

X 27. What mountain is on the south side of the gulch?

Ans. I don't know the name of it.

X 28. About high do you think you would have to climb
384 from this cut, going due south, to the top of the mountain or spur that you would reach in going in that direction from the cut?

Ans. I can't tell.

X 29. About how steep does the mountain rise on that side?

Ans. I couldn't say.

X 30. How far from the cut, going westerly, is it to where the gulch flattens out into a mere sag?

Ans. I couldn't say; never measured it.

X 31. Did you ever make any examination or measurement along the line which a ditch would have to traverse to bring water from Lake Creek onto the placer ground in question?

Ans. I did not; I left it for my partner.

X 32. Such a ditch would have to be brought along mountain sides and across gulches in flumes the whole distance, would it not?

Ans. There are two routes, and I have never been over the ground.

X 33. Did you ever examine the shaft of the Advance lode?

Ans. I don't know the names of the holes that I have been into.

X 34. Did you ever examine the shaft or workings of the Michigan Boy lode?

Ans. I don't know the names of the holes; I have been in nearly all of them for two or three miles.

X 35. Were you ever in the shaft of the Dinero?

Ans. I couldn't tell whether I was in it in an early day, but I haven't lately.

385 X 36. Do you know whether you were ever in the workings of the Advance, North Slope, Amazon, or Horseshoe?

(Objected to as irrelvant and immaterial and not cross-examination, and because the evidence of the plaintiffs' witnesses in this case shows that the lode claims named in the question were located long since the applications were made for the placer patents and the pretended discovery holes on them were sunk since said patents issued.

Ans. In my examination of claims, if I got down into a hole and found nothing there that ended it.

X 37. Please answer the last question.

Ans. I don't know what holes I was in.

X 38. Were you ever in the bottom of a shaft 76 feet deep on either of those claims?

Ans. I was. I think that was the depth of it.

X 39. On what claim was that?

Ans. I couldn't tell.

X 40. What examination did you make of that shaft?

Ans. I made an examination from the top clear down to the bottom.

X 41. How long did it take you?

Ans. About 20 or 30 minutes, I guess.

X 42. How did you get down into it?

Ans. By bucket and windlass.

X 43. Who was there with you?

386 Ans. I don't remember who let me down.

X 44. Did you take any material out of that shaft?

Ans. I *I* brought some rock up with me, and then examined the dump.

X 45. Did you have an assay made?

Ans. No, sir.

X 46. What made you examine that?

Ans. Just the same as I examined other claims on the hill—for my own satisfaction.

X 47. Did you have any light in making this examination; and, if so, what was it?

Ans. Yes; it was a candle.

X 48. Did you have a candle lighted?

Ans. Yes.

X 49. Did you have any tools with you; and, if so, what?

Ans. I found a pick in the bottom of the shaft.

X 50. When did you make this examination—in what year?

Ans. I can't say; it must have been three years ago, probably four.

X 51. Did you do any excavating in that shaft or breaking of rock; and, if so, to what extent?

Ans. I broke a little rock, enough to take samples; I suppose, about two or three pounds, in different places in the shaft.

X 52. Did you have these samples, or any of them, assayed?

Ans. No, sir.

X 53. Do you know whether you were ever in the shaft or workings of the Lizzie Bell, Bonanza Queen, Andrew Jackson, or Ferguson?

Ans. I don't know the names of any of the holes I have been into. I can't remember.

387 X 54. Did you ever stake a lode or dig a shaft for the purpose of locating a lode?

Ans. Yes, sir.

X 55. More than one, and if so, how many?

Ans. About half a dozen, I guess.

X 56. Where was the first?

Ans. That would be too far back. I don't suppose I can remember that.

(Question and answer objected to as irrelevant and frivolous.)

X 57. What kind of rock was the first shaft you ever sunk in and what did you find in it?

(The same objection as last above.)

Ans. I couldn't say; that would be carrying me too far back.

X 58. Where was the second discovery shaft sunk by you located, and what was the name of the claim and what did you find on it, and what kind of rock was it in?

Ans. The last answer will apply to this question.

X 59. What was the name of the third lode that you discovered, where was it located, and what kind of rock was it in, and what kind of mineral did it bear?

Ans. I answer the same as to the 57th interrogatory.

X 60. What was the name of the fourth lode that you discovered, where was it, what kind of rock was the shaft sunk in, and what kind of mineral did it bear?

Ans. The same answer as to the 57th interrogatory.

388 X 61. What was the name of the fifth lode that you discovered, where was it, what kind of rock was the shaft sunk in, and what kind of mineral did it bear?

Ans. Same answer as last above.

X 62. What was the name of the 6th lode that you discovered, where was it, wha' kind of rock was it in, and what kind of mineral did it bear?

Ans. Same answer as last above.

X 63. What was the name of the first placer mine that you ever worked on, where was it, when did you work upon it, and how long?

Ans. I worked in Idaho Territory, about 4 miles east of Boise City, for about six months, about 14 years ago.

X 64. When next did you work on a placer mine, and how long?

Ans. In Idaho or California. I cannot tell which, nor how long, whether 2, 3, 5, or 6 months, off and on.

X 65. When next did you work on placer mine, and how long?

Ans. I could'nt say, unless it was in Colorado somewhere.

X 66. Where and when did you first work on a placer mine in Colorado?

Ans. I don't believe I could tell you that positively.

X 67. As I understand you or infer from your answer heretofore given, you did not perform any placer mining work with your own hands under the lease in Buffalo Gulch.

Ans. I have said before that I was partly in the gulch and partly outside. I did work with my own hands but can't tell how long.

389 X 68. Did you ever do any other placer mining work in Colorado than that mentioned in your last answer, and if any other state when and where in Colorado you did such placer mining work.

Ans. About the last that I ever remember was at the head of one of the branches of Four Mile, before Leadville was discovered to any extent. I don't know what year.

X 69. How long did you work at the head of Four Mile?

Ans. I couldn't say, might have been all summer.

X 70. Did you take any gold out of Four Mile, and if so, how much?

Ans. I did; couldn't tell how much, but a very fair prospect.

X 71. What do you mean by a very fair prospect, a number of colors to the pan?

Ans. Oh, yes; if a man gets four or five colors to the pan sometimes it is a very good prospect.

X 72. Did you get enough gold to sell?

Ans. I did not; it was only a prospect.

X 73. Where else in Colorado have you worked at placer mining other than mentioned by you, and how long and with what results?

Ans. I have prospected all over Park county for placers but never found anything which was not taken up that I thought would pay.

X 74. Have you worked at placer mining anywhere else in Colorado than where you have mentioned?

Ans. Not that I can remember.

390 X 75. Then you never worked in the Upper Arkansas Valley at placer mining except in Buffalo Gulch?

Ans. I have panned in Little American Gulch, just above granite, the fore part of this week. I was down there after a lease.

X 76. Did you get enough gold to sell out of the Little American Gulch?

Ans. The ground was frozen and we couldn't get to bed rock.

X 77. How high was this wall of sand in the cut you made in Buffalo Gulch?

Ans. It varied from the time we started at the line until we reached the head of the pit. It varied from 4½ or 5 feet to 9 feet at the head of the pit.

X 78. At the westerly end of that cut didn't you run into a boggy mass of decayed leaves, moss and mould, with very little earth at the bottom?

Ans. I didn't consider it boggy. There is black soil over the pay gravel.

And thereupon, on redirect examination, said witness McCracken further testified as follows, in response to interrogatories to him propounded by G. G. Symes, Esq., solicitor for said respondents.

Redirect 1. Why can you not tell the locality or the names of any of the lode claims that you say you discovered and located?

A. I have forgotten most of them for the reason that none of them would ever pay.

391 Redirect 2. Have you been mostly engaged in prospecting and mining either for or upon lodes, or for or upon placer mines for the past ten years?

(Objected to as leading.)

Yes, sir.

And on second cross-examination said witness, McCracken, further testified as follows:

Re-X 1. Did you ever discover any lode or placer mine that was worth anything?

(Objected to as irrelevant and immaterial.)

Ans. Yes, sir; but the mill charges were always too high.

(S'g'd) CHARLES L. McCRACKEN.

Subscribed and sworn to this 23d day of April, A. D. 1884, before me—

(S'g'd) ROBERT H. BUCK,
Examiner.

I, the above-named Robert H. Buck, do hereby certify that before the examination of said deposing witnesses Francis C. Fay, Thomas McGowan, James S. Mitchell, Peter Coopy, Harry S. Dean, James A. Sawyers, Henry D. Bates, and Charles L. McCracken, they, the said witness, were and each of them was by me severally duly cautioned and sworn; that said depositions were taken by me at my office in the city of Leadville, in the county of Lake, and State of Colorado, beginning on the eighth day of February, A. D. 1884, at ten o'clock in the forenoon, and thence con-
392 tinuing, by stipulation of counsel, on the 22d and 23d days of April, A. D. 1884; that the testimony of said deposing witnesses and of each of them was reduced to writing by me and by no other person; that after the same were so reduced to writing by me the same as written down, were read over by me to the said respective deponents therein or by agreement of counsel, were read over by the said respective deponents themselves, and that thereupon the same was signed and sworn to by said deponents respectively, before me, and in the presence of counsel, at the place and on the days aforesaid; that the parties to said cause by their respective counsel, Andrew W. Brazee, esq., on the part of complainant, and G. G. Symes, esq., or J. F. Frueaff, esq., on the part of respondents, present during the whole time of the taking of said testimony.

And I do hereby further certify that I am a duly appointed and qualified examiner in chancery of the circuit court of the United States for the eighth judicial circuit within and for the district of Colorado, and that I am not interested in the event of said cause nor of counsel to either of the parties thereto.

Witness my hand at said Leadville, this 24th day of April, A. D. 1884.

(S'g'd) ROBERT H. BUCK,
Examiner in Chancery.

(Endorsed:) 1150. Circuit court U. S. The United States of America vs. The Iron Silver Min'g Co. Report of testimony on behalf of respondents taken before Robert H. Buck, examiner. Opened, published, and filed Nov. 17, 1884. (S'g'd) Edward F. Bishop, clerk.

393 And afterwards, and on, to wit, the 28th day of July, A. D. 1885, there was handed down, and filed in said court and in said cause, the opinion of the circuit judge on final hearing. And the said opinion is in words and figures as follows, to wit:

Opinion of the court.

THE UNITED STATES
against
THE IRON SILVER MINING COMPANY.

Brewer, circuit judge.

This is a proceeding in equity to set aside patents for two placer mines, known respectively as the Stinson and Fanchon placer mines. On demurrer the bill was sustained (see 5th McCrary, page 266; see also, supporting the opinion therein expressed, U. S. vs. Miner, decided in the Supr*e*r Court March 30th, 1885). Answer was thereupon filed, and the case is now submitted on pleadings and proof. The charge in the bill is

fraud in obtaining these patents. It is charged that the ground embraced within these patents was not placer mining ground; that several valuable leads or lodes containing mineral in rock in place existed thereon; that both of these facts were known to the applicant and patentee; that the ground was covered with valuable timber; that he falsely and fraudulently represented to the land officers that there were no veins, leads, or lodes; and that it was placer mining ground; and that he had done the requisite work.

394 The testimony discloses that in 1879 Sawyer, the patentee, prospected on this ground and located, having claimed to discover some four mineral veins. After he had filed and recorded his location certificate he became embarrassed financially and called on Mr. Stevens, now one of the principal owners of the Iron Silver Mine, for assistance. There was a fine growth of timber on the premises. Mr. Stevens went over with him and examined. Upon his suggestion, Sawyer determined to disregard the locations already made and to file application for patent upon an enlarged territory as placer mining ground, Mr. Stevens promising to advance him money upon an agreement that when the patents were obtained the property should be conveyed to him less certain specified portions. In pursuance of this determination applications were made, in which it was set forth that there were no known leads or lodes, proofs duly made, and in due course of time patents issued, and thereafter conveyance of the ground made to the Iron Silver Mining Company, in accordance with the prior arrangement.

I think it obvious from the testimony that the main object of Stevens was to secure the timber. As the proofs were duly and legally made, the proceedings apparently all regular, and no adverse claims presented to the ground finally patented, I take the rule to be that before a court will set aside a patent it must appear not merely that the applicant was mistaken, but that the representations were falsely and fraudulently made, and that this fact must clearly appear. Of course, the first question is: Was this placer mining ground? It appears from the testimony that before Sawyer was on the premises, during some two or three years, a little

395 placer mining had been done in Buffalo Gulch, which runs up through part of this territory. There was but a limited supply of water in the gulch, flowing partially from a spring and partially fed from the melting snows. This supply was exhausted before the summer was ended, so that the amount of placer mining done was small and the proceeds slight. It appears, also, from the testimony, that water could be brought by digging a ditch of some considerable length, and probably at considerable expense. As a matter of fact, since the patent was issued there has been but a trifling amount of placer mining done. Of the many witnesses examined some call it placer mining ground, others say that it is not. Witnesses differ also as to the length and expense of the ditch necessary to bring water into the ground. In view of this conflicting testimony, I do not think that it can be fairly said that it is satisfactorily proved that the ground was not placer mining ground, or that the supply of water was so remote as to make it financially impracticable to bring enough into the ground for placer mining purposes.

I should have much less hesitation in finding for the defendant on this were it not for the evident fact, hereinbefore referred to, that the main in-

terest that Stevens, who furnished the money, had in the matter was in securing the title to this timber. Still, though the parties evidently considered the timber of the most immediate value, it does not follow that they did not in good faith regard this as placer-mining ground, and believe the water could be obtained at reasonable expense.

Again, it is argued by the learned counsel for the Government
396 that the fact that Mr. Sawyer had sunk these prospect holes, and filed and recorded location certificates, estopped him from saying that there were no known veins, leads, or lodes on the premises. I am not willing to accept this proposition as law, and I am satisfied from the testimony that in these prospect holes he had not discovered any well-defined leads or lodes, but was simply experimenting, hoping by further work from the indications to reach such veins. The testimony of the deputy surveyor, who surveyed the premises and examined these holes, is very clear and positive.

One other question remains: The applicant represented that over $500 worth of work had been done and the deputy certified to this fact and I see no reason from the testimony to doubt that this was correct. But, I think, that included in this work was that done in sinking these prospect holes, when the applicant was evidently trying to find veins, leads, and lodes, and it is earnestly contended that no work done in that direction and with that purpose ought to be counted in the application for the ground as placer-mining ground. As counsel for the Government well say, "Suppose the applicant had built on each tract a dwelling-house at a cost of over $500, having done no work of any kind looking to the discovery of mineral, would that come within the spirit of the law? Does it not rather contemplate work done for the purpose of discovering mineral, and if so, may work done in the hope of discovering a vein be counted as work done for the purpose of securing a placer mine?" With some hesitation, I think it may fairly be held that work done for the purpose of discovering mineral, whatever the particular form or character of deposit which is the object of search, is within the spirit of the statute, and as evidently
397 more than $500 worth of such work was done, it cannot be said that the representation made in this respect was false and fraudulent.

In conclusion, while perhaps at times frauds are perpetrated on the Government, and the title to lands improperly taken, yet when, as in this case, the facts as to the character of the ground, the kind of work, as well as the amount done, are fully known to the officers of the Government, I think that courts should be slow in disturbing the title conveyed, and before they do it, should be clearly satisfied that the applicant has intentionally concealed material facts, or made false and fraudulent representations. Questions of doubt should be resolved in favor of the applicant.

Entertaining these views, I am constrained upon the testimony to order a decree dismissing the bill.

(Endorsed:) 1150. Circuit Court U. S. The United States *vs.* The Iron Silver Mining Company. Opinion of the court. Filed Jul. 28, 1885. (S'g'd) Edward F. Bishop, clerk.

And afterwards, and on the same day, to wit, the 28th day of July, A. D. 1885, the same being one of the regular juridical days of the May term, A. D. 1885, of said court (present, the Honorable David J. Brewer,

circuit judge), the following proceeding was had and entered of record in said court and in said cause, to wit:

Decree.—Bill dismissed.

398 THE UNITED STATES OF AMERICA *vs.* THE IRON SILVER MINING COMPANY AND James A. Sawyer. | 1150. In chancery. Bill to cancel a patent and for other relief.

This cause having heretofore come on to be heard upon, the bill of complaint, the answer of the said defendants thereto, the replication to the said answer, and the proof taken in support thereof, and having been submitted to the court upon briefs filed by Mr. A. W. Brazee, solicitor for the said complainant, and by Mr. G. G. Symes, solicitor for the said defendants, and having been by the court taken under advisement, and the court being now sufficiently advised in the premises, doth find the equity of this cause is with the said defendants.

Wherefore, it is ordered, adjudged, and decreed by the court that this cause be dismissed.

And afterwards, and on, to wit, the 10th day of August, A. D. 1885, came Henry W. Hobson, U. S. attorney for the district of Colorado, and filed in said court and in said cause his præcipe for, and sued out of said court, a citation to the Supreme Court of the United States. And the said citation is hereto attached.

Citation.

399 THE UNITED STATES OF AMERICA,
District of Colorado:

The United States of America to the Iron Silver Mining Company and James A. Sawyer, defendants in the suit of the United States of America vs. you, heretofore pending in the circuit court of the United States for the District of Colorado, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 12th day of October next, pursuant to an appeal, notice of and allowance of which was given and entered to and by the circuit court of the United States in and for the district of Colorado on the 7th day of August, A. D. 1885, in the cause of The United States of America v. The Iron Silver Mining Company and James A. Sawyer, wherein the United States is the appellant, and you are the appellees, to show cause, if any there be, why the judgment and decree rendered against the said appellant in said cause July 28th, 1885, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 7th day of August, in the year of our Lord one thousand eight hundred and eighty-five.

MOSES HALLETT,
Judge.

400 PROOF OF SERVICE.

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

On this 10th day of August, A. D, 1885, personally appeared Henry W. Hobson, U. S. att'y, before me, the subscriber, a clerk of the circuit court of the United States for the district of Colorado, and makes oath that he delivered a true copy of the within citation at the office of G. G. Symes, esq., solicitor for the within-named appellees, delivering the said copy to the clerk of the said solicitor in person, the said solicitor not being found at his said office.

HENRY W. HOBSON,
U. S. Attorney for Colo.

Sworn to and subscribed before me this 10th day of August, A. D. 1885.

[SEAL.]

EDWARD F. BISHOP,
Clerk.

By F. W. TUPPER,
Deputy Clerk.

(Endorsed :) Gen. No. 1150. Circuit court of the United States, district of Colorado. United States, plaintiff in error, vs. The Iron Silver Min'g Co. et al., defendant in error. Citation. Filed in the circuit court of the U. S. this 10th day of August, A. D. 1885, Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk. Henry W. Hobson, U. S. att'y for Colo.

401 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore had and entered of record in said court, and in a certain cause lately in said court pending, wherein the United States of America was complainant, and the Iron Silver Mining Company et al., were defendants, as fully and completely as the same still remain on file and of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 28th day of September, A. D. 1885.

[SEAL.]

EDWARD F. BISHOP,
Clerk.

By F. W. TUPPER,
Deputy Clerk.

402 (Indorsement on cover:) No. 347. The United States, appellant, vs. The Iron Silver Mining Company et al. C. C. U. S., Colorado. Filed October 7, 1885.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES, APPELLANT,
vs.
THE IRON SILVER MINING COMPANY, *et al.*
No. 82.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR APPELLANT.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

In this case the United States filed a bill in equity to cancel two patents for alleged placer-mining claims, known respectively as the Fanchon Placer, containing 113.13 acres, dated 17th of November, 1881, and the Stinson Placer, containing 124.25 acres, dated 15th day of June, 1881. They were both issued to James A. Sawyer (Rec., pp. 98 and 101). They were conveyed by Sawyer to the Iron Silver Mining Company by deed dated the 7th of February, 1882. (Rec., p. 152.)

The allegations of the bill are that these placer claims were used as fraudulent machinery, by which the defend-

ants conspired to patent the lands described in the patents for the timber and valuable mineral lodes which were upon them; that the Iron Silver Mining Company had valuable mines elsewhere, and wanted the timber for use therein; that Sawyer and a number of employés of that company were only the instruments of the company to accomplish the fraud; that the lands were not placer-mining lands; that they were lode-mining lands; that Sawyer and the Iron Silver Mining Company knew they were lode and timber lands; that seven different lode claims, on some of which valuable mineral had been found, had been filed upon, and in the immediate vicinity of the alleged placer claims; that large amounts of money had been expended on the lode claims; that the chief value of the alleged placer claims was for the timber and valuable mineral lodes thereon; that the money expended in the prosecution of the lode claims before the filing of the placer claims in this case was the only money, to any considerable amount, that had been expended on the alleged placer claims; that the expenditures and improvements on the lode claims were the only basis for the allegation in the proof of the placer claims that $500 had been expended thereon.

The defendants demurred to the bill, and the demurrer was overruled. They then answered, denying the fraud. Issue was joined and testimony taken, and, on final hearing, the circuit court dismissed the bill, on the ground that the fraud was not clearly established; and ruled, further, that work done, or money expended, in the hope of discovering lode claims, could be counted as done or expended for the purpose of securing a placer claim, which might thereafter be located thereon.

ASSIGNMENT OF ERROR.

The court erred in dismissing the bill by its decree, which is as follows (Rec., p. 196):

THE UNITED STATES OF America *vs.* THE IRON SILVER MINing Company and James A. Sawyer.	1150. In chancery. Bill to cancel a patent and for other relief.

This cause having heretofore come on to be heard, upon the bill of complaint, the answer of the said defendants thereto, the replication to the said answer, and the proof taken in support thereof, and having been submitted to the court upon briefs filed by Mr. A. W. Brazee, solicitor for the said complainant, and by Mr. G. G. Symes, solicitor for the said defendants, and having been by the court taken under advisement, and the court being now sufficiently advised in the premises, doth find the equity of this cause is with the said defendants.

Wherefore, it is ordered, adjudged, and decreed by the court that this cause be dismissed.

And afterwards, and on, to wit, the 10th day of August, A. D. 1885, came Henry W. Hobson, U. S. attorney for the district of Colorado, and filed in said court and in said cause his præcipe for, and sued out of said court, a citation to the Supreme Court of the United States. And the said citation is hereto attached.

Specification 1*st*.—The court erred in finding from the evidence that it was not clearly proven that the representations made in obtaining the patent were falsely and fraudulently made (Rec., p. 194).

Specification 2d.—The court erred in ruling that the work done and money expended in the discovery and hope of discovering lodes, which work was done, and money expended, before there was any intent of making a placer claim, could lawfully be counted as done and expended for the purpose of securing a placer mining claim (Rec., p. 195).

BRIEF OF ARGUMENT.

I.

The evidence does clearly prove fraud by the defendants, the Iron Silver Mining Company and Sawyer. There is exhibited in the record (p. 154) a connected map of the two claims; on page 100 a separate map of the Stinson placer; and on page 102 a separate map of the Fanchon placer.

(1) CONCERT OF ACTION.

The defendants, the Iron Silver Mining Company and Mr. Sawyer, acted in concert in procuring these patents. Record, pages 173, 174, and 175, questions 7, 10, 11, 12, and 13, show the arrangement between Sawyer and Stevens & Leiter. The arrangement was made in the fall of 1879. Stevens & Leiter then owned the mines now owned by the Iron Silver Mining Company, which by virtue of the arrangement between Sawyer and Stevens & Leiter was conveyed to the company. The company was incorporated on the 2d day of March, 1880, Stevens & Leiter

being the principal owners and directors therein, when the same property they had before owned became the property of the company. (Testimony of Waldemia Arens Rec., pp. 88 and 89, questions 5, 6, 7, 8, 9, 10, 11, and 12.)

The articles of incorporation of the company are found at record, pages 139 and 140. The names of the employés of Stevens & Leiter, and of the company after its organization, were used in connection with that of Mr. Sawyer as the locators of the claims (Test. of Arens, Rec., p. 89, questions 14, 15). The money of Stevens & Leiter, or the company, paid for what work was done after the arrangement was made with Sawyer (Arens's Test., Rec., p. 89, questions 19, 20, 21; Rec., p. 178, questions 12, 19, 20, 21; Rec., p. 179, Exhibit V).

The several employés of Stevens & Leiter, whose names had been used to make the locations, deeded to Sawyer; certificates of deeds of Arens and others, dated February 2, April 1, and April 13, 1880 (Rec., pp. 113, 116); Stinson Placer (Rec., p. 134). Sawyer deeded both claims to the company 7th of February, 1882, excepting his six lode claims thereon, filed before his arrangement with Stevens & Leiter (Rec., pp. 152, 153). Further evidence of the arrangement between Stevens & Leiter and Sawyer is given in the testimony of R. Berry (Rec., p. 83, question 3). The absolute unity of Sawyer and the Iron Silver Mining Company, as indicated in the above references, is fully corroborated, without dispute, in parts of the testimony of almost every witness in the case. Especially *vide* testimony of Henderson (Rec., pp. 90, 91, 92); and Louis Rucker (Rec., pp. 75, 76, 77).

(2) THE PLACER ENTRIES WERE FRAUDULENT.

The locators of the claim procured Anderson and Godfrey to swear there were no known lodes of valuable mineral on the claims. For affidavit as to Fanchon claim, *vide* Rec., p. 104; affidavit of the Stinson claim, Rec., p. 133. These affidavits were made on the 14th of February, 1880. Affidavits of James A. Sawyer, dated April 27th, 1880, Rec., pp. 114 and 134.

On the 25th day of July, 1879, Sawyer had entered the Paxton lode (Rec., p. 141).

On the 28th day of June, 1879, he had entered the Jackson lode (Rec., p. 143).

On the 28th of June, 1879, he, with Kaufman and Raymond, had entered the Bonanza Queen lode (Rec., p. 144).

On the 28th of June, 1879, he, with Kaufman and Raymond, had entered the Lizzie Bell lode (Rec., p. 145).

On the 31st of May, 1879, Dyer and others had entered the Gunnison lode (Rec., pp. 147 and 148).

On the 19th of September, 1879, F. L. Molin *et al.* entered the Juniatta lode (Rec., p. 155).

On the 15th of October, 1879, Williams and Kloffensteine entered the Michigan Boy lode (Rec., p. 158).

On the 24th day of July, 1879, Sawyer had entered the Ferguson lode (Rec., p. 142).

On the 1st day of September, 1879, Charles T. Barr *et al.* located the Tidal Wave lode (Rec., p. 156).

Sawyer excepted and reserved in his deed to the Iron

Silver Mining Company, dated February 7, 1882, the following mining claims (Rec., p. 152):

> The following claims, *which are in conflict* with the said Fanchon and the said Stinson placer claims, to wit:
>
> 1st. The Bonanza Queen, recorded and described in the records of the county of Lake and State of Colorado, in book O, on page 78.
>
> 2d. The Lizzie Bell, recorded and described in the same record, in book O, on page 79.
>
> 3d. The Ferguson, recorded and described in the same record, in book O, on page 175.
>
> 4th. The Andrew Jackson, recorded and described in the same record, in book O, on page 72.
>
> 5th. The southern (750) seven hundred and fifty feet of the Paxton, recorded and described in the same records, in book O, on page 176.

On the 27th of April, 1881, Ernest Hoelke, for himself and his joint owners of the Juniatta, filed a protest with the Commissioner of the General Land Office against the Fanchon patent, with affidavit of a well-defined fissure vein upon it (Rec., pp. 119, 120, 121, 122, and 123). Without any denial that the vein existed, Sawyer and W. Arens, the accountant of the Iron Silver Mining Company, compromised with the protestants by agreeing to give them a deed for the lode claim. *Vide* testimony of Hoelke (Rec., pp. 71 and 72, questions 2, 3, 4, and 5.)

On the 6th of August, 1881, in pursuance of the arrangement, the protest was withdrawn (Rec., p. 114). On the same day Sawyer made deed to Hoelke and his associates (Rec., p. 154). In August, 1879, the shaft on this lode was about 10 feet deep (Hoelke's testimony,

Rec., p. 73, cross-questions 2, 6, and 7). In September the shaft reached 60 to 65 feet in depth (Rec., p. 73, cross-question 14). The vein in the lode was discovered 40 to 45 feet (Rec., p. 73, cross-question 12). The vein is a well-defined fissure 18 feet wide, between granite walls, as stated by Cunningham (Rec., p. 123); 15 feet as stated by Heron (Rec., p. 93, question 4). The Juniatta was partly inside and partly outside of the Fanchon placer. The work on it extended about to the line (Heron, Rec., p. 95, cross-question 3). For a full description of the vein see testimony of Heron (Rec., p. 93, question 4). The patent was afterwards issued directly to the protestants (Rec., p. 72, question 3). About one-half of it was in the Fanchon placer (see map, Exhibit A, Rec., p. 154).

The Gunnison lode claim, discovered and located in 1879, runs about 250 feet into the Fanchon placer. It is from 4 to 5 feet thick. It had put out about $60,000 of valuable metal. For description of this, and the Dinero and Orinoco lodes, see testimony of W. B. Ragland (Rec., pp. 80 and 81, questions 5 and 6).

Lewis Portman testifies to the Amazon lode, in November, 1882, on the southwest of the Fanchon (Rec., p. 52, questions 3 and 4), there were indications of lodes on the Fanchon placer all over (Rec., p. 52, question 5). This witness proves character, location, and development of a number of lode claims on the Fanchon (Rec., pp. 53 and 54, questions 11 and 12). The Advance lode, in 1880, cropped to the surface, and had a shaft 5 feet deep; in 1883 a shaft of about 20 feet, and over 60 feet of a tunnel. Same witness (Rec., p. 54, cross-questions 2, 4, 6, 10, and 11). He saw the Lizzie Bell lode in 1880 or 1881. It

then had a shaft 10 to 15 feet deep. The dump showed a well-defined vein (Rec., p. 56, cross-questions 21, 22, 23, 24, 25, 26).

The Michigan Boy was located and opened in 1879, about 60 to 65 feet deep; had a well-defined vein (Rec., p. 60, questions 80 to 89, and 94).

David B. Stiteler testifies to the discovery, on the 9th and 10th of June, 1880, of the Advance lode, 5 and 6 feet wide, on the Fanchon placer, between granite walls, with outcroppings of quartz, 2 to 4 feet high, for probably 6 to 8 rods. He sank a shaft 20 feet deep and ran a tunnel 80 feet, in August and September, 1880. He showed the product to Mr. Stevens, who agreed to put up a mill to test the ore (Rec., pp. 29 and 30, questions 13 to 23, inclusive).

Robert Berry testified he examined the grounds in October, 1882, and found a number of lodes located on the grounds (Rec., p. 84, question 6). He regards the placers as valuable for lode-mining, and found no evidence of any placer work done on the Stinson, and a very trifling amount done on the Fanchon (Rec., p. 84, question 8; Rec., p. 87, question 34, cross-questions 1 to 7, inclusive).

Other witnesses on the part of the Government corroborated the fact that lodes were known to exist before, and soon after, the location of the placer claims.

On the part of the defendant, James A. Sawyer is the leading witness. The character of his testimony is of great importance on the subject. The substance of his testimony, and its character, are found on Rec., pp. 176

and 177, questions 21 and 23, and cross-question 5. Those questions and answers are as follows:

> 21. Were there any known lodes or veins in valuable mineral deposits of any kind of rock in place discovered or known to exist or claimed to exist within the boundaries of said placer claims at or before the date or time of the application for said placer patents?
>
> Ans. None. You may be sure I would never have entered it as placer if there had been.
>
> 23. Were there any lode claims on the discovery shafts of any known lode claims upon the ground included within the said placer claims at the time of the application for said placer patents, except the ones you have named that you located and abandoned?
>
> Ans. None.
>
> X 5. Was all the work that was done by you before October 6th, 1879, on the ground of the Stinson and Fanchon, done in prospecting for lodes or leads?
>
> Ans. Yes; all that I did hunting for lodes and leads was done before that time.

The testimony of James S. Mitchell, who made the examination of the lode claims in the winter of 1882 and 1883, at the request of Mr. Sawyer, relied on by the defendants, is that he saw no minerals in any of the lode claims (R., pp. 168 and 169, questions 9, 13 and 14; R., p. 170, cross-question 7).

Peter Coopy and Harry S. Dean made examinations at the instance of Mr. Sawyer in February, 1884. Their testimony, and its character, is shown on Rec., p. 171, cross-questions 4, 5, 6, and 7; Rec., p. 172, cross-questions 3 and 4.

Charles McCracken, who claims to have made the ex-

amination for his own satisfaction, corroborates Coopy and Dean. The value of the testimony of this witness is well illustrated by cross-questions from 54 to 62, inclusive, Rec., pp. 190 and 191.

Apparently much the most substantial evidence on the part of the defendants to establish that no known lodes were found on the lands at the date of the location of the placers, is that of Henry B. Bates, who made the surveys for the defendants. He was the United States deputy surveyor, and a brother of one of the firm of Weston & Bates, the attorneys for Stevens & Leiter, who prepared all the papers for the placer locations. His testimony-in-chief indicates that he made an examination sufficiently satisfactory to himself to show that there were no known lodes. His testimony-in-chief applies to both the Fanchon and Stinson placers alike. If it had been left to that alone it would have been entitled to great weight, but on cross-examination sufficient facts were developed to show his testimony and examination of the placers were alike perfunctory. That his testimony was composed, at least partly, of inferences instead of facts, *vide* Rec., p. 181, question 14; Rec., p. 184, cross-question 23; also page 182, question 15, and certificate of the surveyor-general as to the value of the improvements on the Fanchon placer, Rec., pp. 111 and 112. To illustrate that his examination for lode claims, and his testimony concerning them, were very negligent, *vide* Rec., pp. 180 and 181, questions 7, 8, and 9; and on Rec., pp. 183 and 184, cross-questions 10 to 22, inclusive. It is to be borne in mind that the shaft, 76 feet deep, on the Stinson claim, was the principal improvement on it, and the one above all others that should

have been examined carefully if he had been making such an examination as he claimed he did.

It is respectfully submitted that the evidence on the part of the United States was affirmative, clear, and convincing, while the negative testimony on the part of the defendants was not sufficiently effective to leave a substantial doubt that there were known lodes of valuable minerals upon the lands at the time of the location of the placer claims.

II.

Section 2325 of the Revised Statutes provides:

> The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors.

To establish a compliance by the defendants with this provision of the statutes, the court ruled that the work done on the lode claims by Sawyer could be legally allowed as a credit to him on the new placer claims to make up the $500 required by the statute. This, it is claimed, is erroneous. The language of the statute requires that the labor shall be expended on the *claim*. This, by a fair interpretation, refers to the claim on which the claimant relies for his title. It must not be labor done on some other claim, which required a different character of improvement from that which he makes. It must be labor in pursuance of the character of the claim. If it is a claim for a homestead, it should be the character of labor that is intended to make a home. For such a

claim it certainly would not be sufficient to show that the claimant had run a tunnel or sunk a shaft.

"Improvements" is used in the statute as equivalent to labor. For the purpose of compliance with the terms of the statute, to build a grist-mill on a piece of land would not warrant the entry of the land as either a lode or a placer claim. The statute clearly contemplates that the labor and improvements shall be of such a character as are commonly used, and as are intended to be used, as appropriate to the nature of the claim. The digging of shafts and driving of tunnels are neither used, nor were they intended in this case, as appropriate labor for placer claims. Such improvements would be a detriment rather than a benefit to placer mines. Had the claimant spent $500 in erecting a skating rink or a toy factory on this land it would be as appropriate an improvement for placer claims as those made by him. That the alleged improvements consisted mainly of shafts and tunnels, dug and driven, for the purpose of the lode claim only is proven by the answer of Mr. Bates, the surveyor, to the 15th question as set forth in Rec., p. 182; also the answer of Mr. Sawyer, Rec., p. 173, question 4; and Rec., p. 177, cross-questions 1 to 10 inclusive.

III.

It is claimed on the part of the Government that the whole transaction was a fraudulent conspiracy on the part of Stevens & Leiter and their successor, the Iron Silver Mining Company, to obtain this land, with its lodes and valuable timber, in violation of the laws of the United States. None of the parties to the transaction have dis-

tinctly in words so stated, but their words and acts, taken in connection with all the circumstances, it is claimed, do establish this.

(1) The lines of the two placers exactly include and coincide with the land in that vicinity, which was covered with valuable green timber, and outside of the boundaries the dead and second-growth timber begins. Stiteler's testimony (Rec., p. 28, questions 5, 6, 7, 8, 9, 10, and 11).

(2) On the 9th day of October, 1879, before the location of the placer claims, Stevens made the following arrangement with Sawyer, who had located the lode claims and sunk the shafts—*vide* statement of Sawyer (Rec., p. 179).

(3) On Stevens's first visit to the land, although the shafts were opened and new, he does not appear to have examined them so closely as he did the timber, and made the arrangement with Sawyer to have the patent taken out and pay the expenses, and allow Sawyer to have his lode claims, and he and Leiter were to take the balance. (Testimony of Sawyer, Rec., p. 174, questions 7, 9, and 10; Stiteler's testimony, Rec., p. 30, questions 22 to 28, inclusive.)

(4) At the time of the arrangement between Stevens and Sawyer, Stevens stated the timber "was not so valuable for saw timber or mining timber as to keep on hand and let grow," yet, immediately after the placer locations were made, Stevens & Leiter and the Iron Silver Mining Company proceeded to cut the timber and take it to their mines, the timber measuring from 4 to 30 inches in diameter. (Sawyer's testimony, Rec., p. 178, cross-questions 13 to 21; Stiteler's testimony, Rec., p. 29, questions 5 and 9.)

(5) Stevens & Leiter used the names of their employés as locators of the placer claims, the employés neither having, nor were they intended to have, any interest therein, nor did they do, or intend to do, any work thereon, nor were they the assignees or grantees of any person who had. The names were used, in some instances, without previous consultation with the employés. Their names were thus used under the supposition that a number of entrymen were necessary to evade the provisions of the land law. (Testimony of Percival Henderson, Rec., p. 91, questions 7, 8, 9, and 12; testimony of Louis Rucker, Rec., p. 76, questions 11 to 17, inclusive; testimony of Waldema Arens, Rec., p. 89, question 15; Rec., p. 90, cross-question 3.)

(6) On the 7th of February, 1882, Sawyer deeded the land, subject to the reservation of his lode claims, to the Iron Silver Mining Company, stating expressly in the deed that those claims *were in conflict* with the Fanchon and Stinson placer claims. From November, 1882, until the date of the taking of the testimony, on the 22d of April, 1884, that company has had from six to ten men most of the time hunting for lodes on the land which Stevens, at the organization of this alleged conspiracy, said was not the character of land on which lodes were found. (Sawyer's testimony, Rec., p. 178, question 11.)

(7) Most of the witnesses for the Government testify that the land is not placer mining land. Most of the defendants' witnesses testify it is. The defendants never yet expended any money on it in placer mining, but gave one lease to others in June, 1883, on which the lessees ex-

pended from $200 to $210 in placer mining, and obtained only 1½ to 2 ounces of gold, worth $14 per ounce. This test corroborates complainant's testimony that it is not placer mining land. *Vide* testimony of Clary (Rec., pp. 41 and 42; q. 8, 10, 11, and 12).

(8) Under the arrangements between Stevens & Leiter and Sawyer, Sawyer was to make pretense of abandoning his lode claims. If the abandonment was real, he abandoned the work he did upon them, and the lands were returned to the public domain, with a right of entry to any qualified locator. In that event, there was no work or improvement which would apply to these placers. If the abandonment was a sham, which the deed shows it was, then the work and improvements would only apply to the lode claims reserved by him. In either event there would be no work or improvement legally applicable to these placer claims, and they were located without any improvement whatever as required by the statute.

(9) The result of this scheme is the best possible evidence of the intent of the parties. This proves unmistakably by the evidence and reservations in the deed, that if this transaction be sustained, it will give to Sawyer his lode claims, and those only, as staked out by him; that Stevens & Leiter and their successors, the Iron Silver Mining Company, will retain the remainder of the timber and lode lands without doing a single stroke of work, or complying with one single requirement of the law, with reference to labor or improvements. As this result was contemplated by Stevens & Leiter in the first instance, and as they intended to appropriate this timber and lode

land without compliance with the law, it is maintained it was such a fraudulent manipulation to evade the law as should render these placer claims void, and the patents should be canceled.

G. A. JENKS,
Solicitor-General.

10208———2

Office Supreme Court U. S.
FILED.
JUN 1 1888
JAMES. H. McKENNEY.
CLERK.

In the Supreme Court

Of the United States

THE UNITED STATES,
Appellant,
vs.
THE IRON SILVER MINING COMPANY, ET AL.,
Appellees.

BRIEF FOR APPELLEES.

L. S. DIXON,
For Appellees.

WHIPPLE & PIERSON, LEGAL PRINTERS, DENVER, COLO.

In the Supreme Court

Of the United States

THE UNITED STATES,
Appellant,
vs.
THE IRON SILVER MINING COMPANY, ET AL.,
Appellees.

BRIEF FOR APPELLEES.

This is a proceeding in equity instituted for the purpose of setting aside the patents issued by the appellant to the appellee Sawyer for the Fanchon and Stinson placer mines, located in California mining district, in Lake county, Colorado, on account of fraud in obtaining the patents. It was alleged in the bill that the land embraced within these patents was not placer mining ground; that various lodes, veins, ledges and seams bearing silver, gold and lead in place of great value were contained therein; that both of these facts were known to the patentee Sawyer; that he, together with one Stevens and one Leiter, conspired to obtain patents for the land from the government upon the pretense that it was placer mining ground and subject to entry as such, and thus to secure the same for themselves and for the Iron Silver Mining Company, and thereby to defraud the government; that Sawyer falsely and fraudulently represented to the land officers of the government that there were no veins, leads or lodes known to exist on the land, that it was placer mining ground, and that he had performed the requisite amount of work thereon.

All of the above allegations were expressly denied in the answer.

It was admitted that Sawyer filed his application for the placer patents in the U. S. land office at Leadville February 11, 1880, and that the government issued to him its patent for the Stinson placer mine June 15, 1881, and its patent for the Fanchon placer mine November 17, 1881. It was further admitted that on the 7th of February, 1882, Sawyer conveyed the placers, save and except certain portions thereof which he reserved for himself, to the Iron Silver Mining company, in which concern Stevens and Leiter were interested.

These patents were issued under sections 2329 and 2333 of the Revised Statutes of the United States, which are as follows:

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

SEC. 2333. Where the same person, association or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; *but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.*

In the patent for the Stinson placer mine were contained the following stipulations and conditions:

First—That the grant hereby made is restricted in its exterior

limits to the boundaries of the said lot No. 661, as hereinbefore described, and to any veins or lodes of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, which may hereafter be discovered within said limits, and which are not claimed or known to exist at the date hereof.

Second—That should any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, be claimed or known to exist within the above described premises, at the date hereof, the same is expressly excepted and excluded from these presents (p. 100).

The Fanchon patent contained similar stipulations and conditions (p. 103).

Inasmuch as there has been no attempt on the part of the counsel for the government to abstract the testimony produced upon the hearing, and as we think a careful review of the same would be sufficient to convince the Court that the complainant failed wholly to substantiate the averments of its bill, we desire to present the following summary for the consideration of the Court:

The first witness for the government was **David B. Stiteler**, (pp. 28–40). His occupation was that of "a rough carpenter, rail splitter or mining timber cutter," (p. 34), and his mining experience was very limited (pp. 31–33). He discovered, June 9 or 10, 1880, what appeared to him to be indications of a lode on the Fanchon placer. "There were outcroppings of quartz from two to four feet high. The croppings are for probably six or eight rods, and I can follow the flow the whole length of the lead, fifteen hundred feet" (p. 29). "The 'flow in' float, or whatever you call it, is quartz or lode matter which is contained in the lode. In some places the ground was covered with it. It was scattered promiscuously more or less all over the lode." (p. 30). "The indications were the croppings of quartz and lode matter, also the cropping or flow of wall rock. These indications could be discovered promiscuously, more or less, all over the placers" (p. 31.). In company with his brother, in 1880, Stiteler proceeded to sink two shafts, and, also, to do some extensive tunnelling, all of which resulted in a failure to discover any defined lode or vein. It was not until the winter of 1882, over a year after the patent of the Fanchon placer was issued to Sawyer, that Stiteler, upon then sinking a third shaft, succeeded in finding a lode or "vein matter in solid formation between granite walls" (pp. 32–33). This discovery constituted the "Advance" claim.

Charles Clary (pp. 41–44) testified that in June, 1883, with the witnesses, Kavanagh, McCracken and one Moore, he prospected Buffalo gulch. He came to the conclusion it would pay if what little water they had held out (p. 41). They worked a strip of ground eight or nine feet wide and forty feet long, and found gold, but in limited quantities. He believed, if they had water on the ground, it would pay expenses (p. 42). If water were brought on the ground it would be from the bottom of the gulch, that is three quarters of a mile below the Sawyer stake. He doubted the feasibility of bringing a ditch in there without there were more gulches on the placer. He further testified, "Mr. George Kroeger told me that if I thought the ground would pay and could get a ditch in there that didn't cost over $6,000, and would get a lease from the Iron mine for three years, he would put a ditch in there or get one put in." Clary tried to get such a lease, but was obliged to wait until the directors of the Iron mine met (p .44.)

Austin J. Kavanagh, (pp. 44–46,) testified that he had worked in June, 1883, with the witness Clary placer mining upon the Fanchon placer. He would call the ground of the Fanchon placer, at and about where they were working, placer ground (p. 45). "In all the work we did there we found gold, both in dust and nuggets." He saw no lodes, ledges or veins of mineral on the Fanchon or Stinson placers; he saw a few holes with water in them; he did not go round any; he saw some tunnels, but was never in them (p. 46).

Albert M. Pennock, (pp. 46–49), testified that he discovered on the Fanchon placer in December, 1882, what he called "a lead" and named the "Iron Duke" claim. This discovery was made thirteen months after the Fanchon placer patent was issued to Sawyer.

John F. Lewis, (pp. 50–51), was engaged in December, 1880, in hauling timber for the Iron mine. He testified as follows: "When I was hauling these timbers I was going out one morning after a load, overtook Mr. Sawyer; think he had been to Leadville. He got on to ride with me; he told me somthing in regard to this patent; I don't remember all he told me; he told me he had been there quite a while, I don't know exactly how long; had spent all his money prospecting; that Mr. Leiter was an old acquaintance of his, and he thought he would go over and see what he could do with him in regard to prospecting. He met Mr. Leiter in his office, or about the Iron mine, and had a lit-

tle talk with him about his property; also he spoke about there being good timber over there, or Mr. Leiter asked him about the timber. Mr. Leiter told him that probably he might do something for him to help him; to wait and see Mr. Stevens, who was more used to doing that kind of business, or something to that effect. Mr. Stevens came in and had a little talk in regard to the country over there. Mr Stevens, I believe, made arrangements to go out in a few days and look at it. I don't remember then what else he told me. And then he told me that he had made arrangements that he was to enter the placer or placers—I don't remember now—and Stevens was to develop his property. I don't remember whether they were to deed him the whole or half. They were to pay all expenses. I think he told me the ground was entered in his name."

Lewis Portman, (pp. 52–64), testified as follows: "I discovered the 'Amazon' vein about the middle of November, 1882, on the southwest corner of the Fanchon. The vein cropped within a few feet of the surface; a well-defined vein with a smooth foot-wall of granite; have not seen the hanging-wall yet" (p. 52). We observe that this discovery was made a year after the Fanchon patent was issued to Sawyer, and that the vein was not apparent upon the surface. The witness, with reference to surface indications, said: "I am not acquainted with the Stinson placer, but have been over the Fanchon and have seen float and blossom rock scattered all over" (p. 52). He also testified to having seen or known of a number of lode claims upon the Fanchon and Stinson placers. Upon cross-examination it appeared that his knowledge of the boundaries of these claims was indefinite and unsatisfactory, and it also appeared that, of the instances cited by him, in some cases there was no sufficient evidence that a lode or vein had ever been discovered; in others, the discovery of the vein or lode had occurred over a year after the placer patents were issued to Sawyer, and in the remainder of instances all the workings in which a lode or vein had been found were located outside of the limits or boundaries of the placers.

William M. Garr, (pp. 64–67), testified that he, W. W. Miller and Frank Carr, located on one of the placers, he did not know which, what is called the Horseshoe claim in November, 1882, and found what they called a vein. At that time they had a granite wall, foot wall, but he did not think it was in place.

It is to be observed that this discovery occurred a year after the placer patents were issued to Sawyer.

With reference to surface indications this witness testified: "The first time I went over the ground, I found lots of float, blossom rock, which I supposed to be from lodes. I thought the indications were good myself. The ground was covered with blossom rock, especially in the gulches and ravines." (pp. 64--65.)

Ernest Hoelke, (pp. 71–74) testified that the controversy between the Juniata claim and the Fanchon placer was settled by a compromise. The Juniata owners received a deed from the Fanchon owners of the land in conflict, and the Juniata owners then deeded back to the Fanchon owners all, or half of the timber thereon (p. 72). There were no indication of lode claims or lodes, leads, veins, ledges of mineral, gold, silver, or other precious metals in rock in place apparent on the surface of the ground in that locality in 1879. He said, "we discovered iron bearing rock carrying traces of silver on the ground of the Juniata, not in conflict with the Fanchon. We sunk a shaft on such poor indications and a good deal later discovered a vein (p. 72). We have never done any workings on the Juniata claim on the Fanchon placer side of the crest of the hill. We found what we believed to be a vein of mineral forty to fifty-five feet below the surface (p. 73.) I saw no lodes cropping out on what I believed to be the Fanchon placer, at any point." (p. 74.)

Louis K. Rucker, (pp. 75–80) testified: "The character of the ground included within the Fanchon and Stinson placers is wash and gravel; also, black dirt or soil, and from my experience in placer mining, and seeing placers, I should say it was very favorable ground to find placer gold in. I never saw or heard of any mineral lodes or veins bearing gold, silver, lead, or other valuable deposits developed or exposed to view upon this placer ground before application for patent. I saw no veins or lodes of rock in place bearing gold, silver, lead, or other valuable deposits cropping out, or to be seen on the surface of the ground within the placer claims before the application for patent. (p. 78.) Some of the best placer mines in the country are located close to them. I mean by that, about a mile off, or less." (p. 79.)

William B. Ragland, (pp. 80–82). In 1879 the indications on the Fanchon placer were nothing but ordinary float, wash. He could see scarcely any indications of fissures on the surface at all. The wash was pretty deep (p. 81). He was not on the

Stinson placer at all that year. The Dinero claim was discovered in 1882, the Oronoco in 1883, the Gunnison in 1879 (pp. 80–81). The Gunnison was surveyed on the surface so that about 250 feet extended across the Fanchon, but no vein or lode on the Gunnison had been developed within the boundaries of the Fanchon placer (p. 82).

Robert Berry, (pp. 83–87), was a special agent of the U. S. general land office. He testified that the whole source of supply of water for placer mining on these claims in the spring of the year is the melting of the snows; after that, two springs of small capacity. There is considerable water on the Fanchon in early summer—on the Stinson there is none. He thought water could be taken from one of the springs by a ditch or conduit on to the lower end of the Stinson placer (p. 85). He did not believe the ground had any value as placer mining ground (p. 86). Upon cross-examination he stated that he had never prospected over any considerable portion of these placer claims, by panning dirt or otherwise, to determine the quality of placer gold that might be found therein. He admitted there was wash and gravel over a large portion of the ground in the vicinity, but did not think there was on the placers. He knew of no discovery shafts or other underground workings in which valuable deposits of metal bearing rock in place had been found or discovered before the application for patents. The only valuable lode deposits or veins discovered or developed on these placers were the Amazon, discovered in the fall of 1882, the Advance (discovered in the winter of 1882, see Stiteler's testimony, pp. 32–33), the Horseshoe (discovered in November, 1882, see Garr's testimony, p. 64), and the Gunnison (all of whose workings were outside of the placers, see Portman's testimony, p. 58, and Ragland's testimony, p. 82). (p. 87.) With reference to surface indications, he testified: "In some places the solid formation comes to the surface, at others there is a debris of several feet in thickness, composed of detritus or decomposition of rocks and vegetable matter" (p. 86).

Waldemar Arens, (pp. 88–90), testified that the land was represented to him by Sawyer and others to be placer mining ground before he authorized Sawyer to use his name as one of the locators for the purpose of obtaining title (p. 90).

Percival Henderson, (pp. 90–92), testified that his name was used by Sawyer as one of the locators of the Fanchon and Stinson placer claims, that he was satisfied, and afterwards joined in the deed to Sawyer (p. 91).

John H. Heron, (pp. 92–96), was one the discoverers of the Juniata lode. He had not, to his knowledge, found or seen within the exterior boundaries of the placer, any discovered vein or lode of rock in place, carrying gold, silver or other valuable deposits (p. 95.) He did not remember the Stinson placer (p. 94.) With reference to surface indications he said: "I found considerable float—several large pieces of float—one piece containing about six dollars in gold to the ton. I broke it off from a large boulder. Besides the gold it contained about three ounces of silver. I broke off another piece from another smaller boulder. It ran more silver than gold. I think about ten ounces silver. That was near about the break of the hill" (p. 94). It is common, and miners expect to always find float rock carrying gold, upon and in the vicinity of placer gold. Finding this float rock carrying gold is an indication that where it was found, or in the immediate vicinity, there is placer mining ground, or ground containing placer gold, (p. 95). To the best of his knowledge the work done on the Juniata lode claim was done outside of the placer claims, (p. 94).

This was all the evidence produced on the part of the government.

The first witness for the defendants was **Francis C. Fay,** (pp. 160–163), who testified that in 1876 and 1877 he had prospected for gold over the ground included within the Fanchon and Stinson placers. He sank holes and ran cuts and found gold in all the holes and cuts, (pp. 160, 161). The source of supply of water in Buffalo gulch was from the snow and springs (p. 163).

Thomas McGowan, (pp. 163–168), testified that in 1878 he crossed the ground included within the Fanchon and Stinson placers, looking for placer mines, found some old workings, prospected their banks and found gold, he thought in paying quantities. He saw no indications of, or workings upon lode claims within the placer premises in 1878, (p. 163). He again commenced placer mining there in May, 1883, and found coarse gold, on the Fanchon principally, (pp. 162–163). He had made a careful examination of the seven lode claims located and abandoned by Sawyer. In one he found granite in place, in all the others only wash. He found no lode, ledge or deposit of mineral in rock in place bearing silver, gold, lead or other precious metals, (p. 164). He made such an examination as would have shown to him any lode or vein of mineral if contained therein, (p. 165). He had been familiar with placer mining for twenty-four years, (p. 164).

The source of supply of water in 1883, when he worked there, was snow and springs.

James S Mitchell, (pp. 168–170), worked in the summer of 1883 upon the claims located and abandoned by Sawyer. He looked for mineral, but didn't find any. He found in the Lulu May and Lizzie Bell bed rock, solid formation, but no mineral. The bed rock was granite. The others were all wash. He did not see in any of them mineral matter or indications of mineral of any kind. The Fanchon placer is all over with discovery holes taken up by jumpers. He saw no mineral. There were parties working on the Advance and Amazon in the winter of 1882–3. Nobody was working upon the others, (p. 169). That which was claimed to be mineral was a white rock resembling quartz or hard porphyry, (p. 180).

Peter Coopy, (pp. 170–171), and **Harry S. Dean**, (pp. 171–172), both testified to having been in four of the lode claims located and abandoned by Sawyer, and to having each made a careful examination for the purpose of finding out if the same or either of them contained mineral in place. Neither of the witnesses found any mineral in place; there was nothing to be seen but wash.

James A. Sawyer (pp. 172–180), one of the defendants, testified that in June, 1879, he located seven lode claims on the ground now included within the Fanchon and Stinson placers, and from that time until the 10th or 11th of October of that year he had three or four men at work on the same, digging holes and crosscuts, trying to find lodes. They found only wash and rocks. By October he was considerably in debt, and then consulted Leiter and Stevens. Previous to this he had done a little placer mining with one of his men, an old Black Hills miner, and found gold, but there was not water enough to do much washing. They, however, decided if they had water they could make it pay. Stevens went with Sawyer and walked up and down over the claims. He examined pretty closely the trees and everything, and remarked "that the timber was not so valuable for saw timber or mining timber as to keep on hand and let it grow." They examined the holes. Stevens said, "it was a waste of money to dig in that ground for lode claims, as the formation was not such as they usually found lodes in; that the rock was not granite but gneiss." Stevens suggested that it be taken up as placer, provided they could trace out any ground upon which they could bring

water over from Lake creek. Upon examination Stevens decided it was practicable to bring water from Lake creek across and upon the ground by a ditch to carry on placer mining. Stevens said "that he would not give a pinch of snuff for the ground for lode claims, or the prospect of finding lodes." Then he went on to say that he could serve two purposes, that is save the ground from loss by timber thieves, and make some money by working the placer." Stevens and Leiter agreed to put up the money and give Sawyer a grub stake—he doing the work and entering as placer the land in question, and being allowed, after the patents were issued, to select forty odd acres of land and deed them the balance. Sawyer abandoned the lode claims, after consultation with an attorney, as there were no lodes or veins discovered. He said: "I had worked them for months with all the men I could hire on tick and other ways, got in debt, and couldn't find anything to pay, nothing like pay, and with the hope of washing out gold by using it as placer ground, and trying to make something out of it, and get my money back, I took it up as placer. With the assistance of Stevens and Leiter I could do so" (p. 176). The ground was located in the name of Sawyer and eight others. After the location the others deeded their interests to Sawyer, and he applied for patents in his own name. Sawyer went upon the ground and stayed there, working with three men, until the patents came. He paid for work and labor on the Fanchon between $500 and $600 before he made application for patent, and a little over $700 for work and labor on the Stinson before he applied for a patent. The character of this work and labor consisted of open cuts and sinking on the placers, except what he did on the cabins and shanties. He erected four cabins. After the patents came he deeded all but forty acres of the land to Stevens and Leiter. There were no known lodes or veins of valuable mineral deposits of any kind of rock in place discovered or known to exist, or claimed to exist, within the boundaries of the placer claims at or before the date or time of the application for placer patents (p. 176). The Iron mine leased the ground last year (1883) to Clary and McCracken for placer mining. They worked as long as the water lasted. He did not know how much they took out, but he saw very nice dust and nuggets. Before that lease he (Sawyer) worked two men there a while. The ground was frozen so hard they did not make much headway, but they took out some dust, nuggets and pieces of gold like wire, an eighth of an inch long, or longer. There were no

lode claims, or the discovery shafts of any known lode claims, upon the ground included within the placer claims at the time of the applications for placer patents (pp. 176–177).

Henry D. Bates (pp. 180–185), a deputy U. S. surveyor, testified that he had made two surveys of the ground included within the placer claims, one for Sawyer, Stevens and Leiter upon locating the claims, and the other an official survey as U. S. deputy surveyor by direction of the surveyor general at the time of the application for placer patents (p. 180). He examined every pit, cut and shaft on the properties to determine whether or not any lode, vein or ledge of mineral-bearing rock existed in these openings, and found nothing had been discovered in the way of mineral-bearing rock in place (pp. 180–181). On the Stinson placer claim, at the time he made the official survey, the improvements consisted of a cabin, a shaft and two pits, as shown upon the plat returned to the surveyor general. He put the cost of these improvements at $600; that was very low, as probably they cost more than that. The improvements on the Fanchon claim consisted of eight pits and two cuts. He estimated the cost of these at about $400. He stated all these facts and described the improvements in the field notes made by him and returned to the surveyor general. He noticed that upon the Fanchon placer some prospecting for placer mines had been done, and that the ground had the appearance of being auriferous. "A ditch could be dug from the Buffalo gulch, on the Fanchon claim, around the mountain to Lake creek, in such a manner that a large amount of water could be brought into Buffalo gulch, and in that way placer mining work could be carried on successfully, so far as washing the dirt is concerned" (p. 182).

Charles L. McCracken (pp. 185–192) testified that he, together with the witness Clary, had a lease on the Fanchon placer and worked there placer mining in June, 1883 (p. 185). He considered the ground first-class placer ground, and thought it would pay well if a ditch was constructed from Lake creek, which could easily be done. He had himself agreed to construct such a ditch, to cost not less than $6,000, if the owners of the placer would give him a three years' lease (p. 186). He had not seen any lodes, veins or discoveries of any kind in the shafts and holes he had looked into upon the placers (p. 186).

William H. Stevens, (pp. 24–25) testified that he had known the Fanchon and Stinson placer ground since June 1, 1879. The

ground was a rolling, uneven surface, with gulches, ravines, and small streams passing through it, and was covered with a young and second thrifty growth of timber. I examined the pit holes, openings and excavations upon said land, and found that the sand and gravel therein contained float or placer gold. I should classify the ground as placer ground. I crossed and recrossed the ground several times, and examined all the shafts, pit holes and excavations upon said land with care in regard to their mineral value, and decided that there were no lodes, veins, ledges, or mineral deposits of rock in place, having gold, silver, lead, cinnabar, copper, or other minerals of value; that it was wasting time and money to attempt to find or discover mineral veins of value there, but that the only mineral of value I found was float gold in the diluvial deposit of sand and gravel, and my decision and opinion was, and is, that it was placer mining ground. I made an examination with pocket instruments, going all over the ground, and found that the waters of Lake creek could be easily carried in ditches and flumes to work and wash said placer lands." (p. 24.) He had no doubt about its being practicable to bring water on said mineral lands to be used for placer mining purposes.

"Prior to June 10, 1879, the date of location of these placer claims, I examined all shafts and pit holes on said placer lands, for the purpose of determining whether there were any lode veins, and found that there were no known or discovered lodes, veins, ledges, or mineral deposits of rock in place bearing gold, silver, lead or other valuable deposits within said placer claims at that time."

"After deciding that it was placer ground, and practicable to bring water on it, Mr. Leiter and myself accepted of a proposition from Mr. Sawyer, to furnish the money in order to make the necessary explorations, improvements and entry of application for government patent; he, Sawyer, to do all the work, and obtain title, for a share in the property. Our object and purpose in assisting said Sawyer was to obtain an interest in said placer lands, being convinced of its character as such." Leiter and he furnished the money to assist Sawyer to perform and make the improvements necessary to obtain the placer patents, in good faith, and for the purpose of obtaining title to the ground for placer mining purposes. (p. 25.)

In connection with the testimony above set forth we beg leave to call attention to *The Maxwell Land Grant Case*, 121 U. S., 379–

381, wherein the rule as to the character and degree of evidence requisite to authorize a court of equity to set aside a patent of the United States on the ground of fraud is clearly stated:

"The deliberate action of the tribunals, to which the law commits the determination of all preliminary questions and the control of the processes by which this evidence of title is issued to the grantee, demands that to annul such an instrument and to destroy the title claimed under it, the facts on which this action is asked for must be clearly established by evidence entirely satisfactory to the court, and that the case itself must be entirely within the class of causes for which such an instrument must be avoided." * * * * * "We take the general doctrine to be, that when in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments demand that the effort to set them aside, to annul them or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in this country and so many rights are held, purporting to emanate from the authoritative action of the officers of the government, and, as in this case under the seal and signature of the president of the United States himself, should be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice; but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful."

We would also refer to a recent decision of this court, in the

case of *The Colorado Coal and Iron Co. et al.* v. *The United States*, in which the doctrine is reiterated.

In the present instance the government has not only failed to produce evidence of the character and weight required by the rule prescribed by this court, but it has, we submit, failed wholly to establish the truth of the material averments of its bill. From the testimony produced on the part of the complainant, as well as from that produced by the respondents, it is apparent that the land included within the boundaries of the Stinson and Fanchon placer claims was and is placer mining ground; that placer mining had been conducted thereon since the year 1877, at various times, and that placer gold had invariably been found in limited quantities, in the form both of dust and nuggets. The water supply derived from "melting snows and springs" was, it is true, limited, but still sufficient at certain seasons of the year, as, for instance, in the spring and early summer. To have made the land, however, available for extensive placer mining operations it would have been necessary to construct a ditch or flume from Lake creek to the placer territory. This measure was practicable, and had been contemplated not only by Sawyer, Stevens and Leiter, but by others. Proposals had actually been made for the construction of such a water way, by men who regarded the project not only as feasible but as one which could be effected at a reasonable expense and with satisfactory results.

The evidence also clearly demonstrated that no known or discovered vein, lode, ledge or seam, bearing silver, gold or lead in place, existed within the boundaries of either of the placers at the time of application for the placer patents, or when Sawyer obtained the same from the government; that neither Sawyer nor any one else knew of the existence of any such vein, lode, ledge or seam. Although there had been considerable prospecting, although pits and shafts had been sunk, although cross-cuts had been run and tunneling done, yet nothing but wash, rocks and float had been found. No vein or lode was discovered, or known to exist, upon either of the placers until the winter of 1882, over a year after the placer patents were issued. It is true that upon the surface of the placers in some localities there existed what might be termed indications of lodes in the form of "outcropings of quartz," "float," or "blossom rock," but nothing more. In order that the court might fully understand of what these indications consisted, we were careful to set forth the precise language used by the different witnesses in describing such indications, and now in connection therewith, we would

refer the court to the recent case of the *Colorado Coal and Iron Co. et al.* v. *The United States*, cited above. The language of Mr. Justice Matthews, who delivered the opinion of the court, was very significant. He said:

"It is not sufficient, in our opinion, to constitute 'known mines,' of coal within the meaning of the statute, that there should merely be indications of coal beds or coal fields of greater or less extent or of greater or less value, as shown by outcroppings. The act of 1864 evidently contemplates a distinction between coal beds or coal fields excluded from the pre-emption act of 1841, as 'known mines,' and other coal beds or coal fields not coming within that description. We hold, therefore, that to constitute the exemption contemplated by the pre-emption act under the head of 'known mines,' there should be upon the land ascertained coal deposits of such an extent and value as to make the land more valuable to be worked as a coal mine, under the conditions existing at the time, than for merely agricultural purposes. The circumstance that there are surface indications of the existence of veins of coal does not constitute a mine. It does not even prove that the land will ever be under any conditions sufficiently valuable on account of its coal deposits to be worked as a mine. A change in the conditions occurring subsequently to the sale, whereby new discoveries are made, or by means whereof it may become profitable to work the veins as mines, cannot affect the title as it passed at the time of the sale. The question must be determined according to the facts in existence at the time of the sale. If upon the premises at that time there were not actual 'known mines' 'capable of being profitably worked for their product so as to make the land more valuable for mining than for agriculture, a title to them acquired under the pre-emption act cannot be successfully assailed. In the present case, the testimony, in our opinion, does not justify us in finding that at the time Jackson acquired his title there were upon any part of the premises in controversy any 'known mines' of coal in the sense of the statute."

Again, the government failed to wholly establish any conspiracy on the part of Sawyer, Stevens and Leiter to defraud the government.

From the evidence, it was apparent that Sawyer had expended four months time, and all his means, in the vain attempt to discover a lode or vein upon the land included within the placers; that in his distress he consulted Stevens, who, after examining the ground, became convinced it was worthless for lode mining,

but valuable for placer mining and for its growth of timber, and that water could be brought upon it by means of a ditch. It was then that Sawyer determined to take up the land as placer ground. He abandoned his so-called lode locations, as he had an undoubted right to do, since no lode or vein had been discovered. Stevens and Leiter advanced the necessary money, and Sawyer performed the requisite work, and, after obtaining the placer patents, conveyed all but forty acres of land to the Iron Silver Mining Company, in which Stevens and Leiter were interested. That Sawyer performed the requisite work is apparent from his own testimony, and from that of Bates, the United States deputy surveyor. The character of the work done by him was also fully known to the government officials before the patents were issued, being accurately described on the plats and in the field notes forwarded by Bates to the surveyor general.

There was no attempt to deceive or to defraud the government upon the part of Sawyer, Stevens and Leiter, or on the part of either of them, nor, as a matter of fact, was the government either deceived or defrauded.

The second condition or stipulation in each of the patents contains the words "*claimed* or known to exist." That this language is broader than is warranted by the statute has been recently decided by this court.

The Iron Silver Mining Co. v. *Reynolds*, 124 U. S., 382.

In conclusion, after inviting the court to a consideration of the opinion of the circuit judge, (pp. 193–196 of the abstract), we respectfully submit that the action of the court below in dismissing the bill was correct.

L. S. DIXON,
For Appellees.

DENVER, May 20, 1888.